No. 13566

United States
Court of Appeals
for the Ninth Circuit.

PEDRO GONZALES,

Appellant,

vs.

BRUCE G. BARBER, District Director, Immigration and Naturalization Service, San Francisco, California,

Appellee.

Transcript of Record

Appeal from the United States District Court for the Northern District of California Southern Division.

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—12-12-52

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

NAMES AND ADDRESSES OF ATTORNEYS

GLADSTEIN, ANDERSEN & LEONARD,
LLOYD E. McMURRAY, ESQ.,
240 Montgomery Street,
San Francisco, California,

Attorneys for Appellant.

CHAUNCEY TRAMUTOLO, ESQ.,
United States Attorney,
EDGAR R. BONSALL, ESQ.,
Assistant United States Attorney,
San Francisco, California,

Attorneys for Appellee.

In the United States District Court for the Northern District of California, Southern Division

No. 31724

In the Matter of

The Application of PEDRO GONZALES for a Writ of Habeas Corpus

PETITION FOR WRIT OF HABEAS CORPUS

Your petitioner respectfully shows:

I.

That he is a national of the United States residing in the City of Seattle, State of Washington.

II.

That he is unjustly and unlawfully detained and imprisoned by the authority of Bruce Barber, District Director, Immigration and Naturalization Service for the Thirteenth Immigration District, in the Detention Ward at 630 Sansome Street, San Francisco, California.

III.

That the cause or pretext for such detention is a certain final order of deportation made by the Immigration and Naturalization Service of the United States ordering that your petitioner be deported to the Philippine Islands and that he be imprisoned and detained until such deportation.

IV.

That said restraint and imprisonment are illegal and in violation of the Constitution of the United

States and the amendments thereof and in violation of the statutes of the United States for the following reasons: Your petitioner was born in the Philippine Islands and at the age of seventeen, in 1930, entered the United States at the port of San Francisco, California, and has legally and lawfully resided in the United States continuously since that date. That your petitioner is therefore not subject to deportation as an alien.

V.

That this petition is made and verified on behalf of said petitioner by his attorney, Ewing Sibbett, Esq., because said attorney is informed and believes and therefore alleges that said petitioner will be placed upon a vessel of the United States for deportation to the Philippine Islands at noon today, August 5, 1952, and there is therefore not sufficient time within which to secure said petitioner's personal verification of this petition. That the facts herein set forth have been related to said attorney by said peitioner in a personal interview, and said attorney believes said facts to be true.

Wherefore, your petitioner prays that an Order to Show Cause be directed to the said Bruce Barber commanding and ordering him to show cause why a writ of habeas corpus should not be issued by this Court directed to the said Bruce Barber, District Director, Immigration and Naturalization Service for the Thirteenth Immigration District, commanding him to produce the body of petitioner before this Honorable Court at a time and place therein to be

specified, then and there to receive and to do what this Honorable Court shall order concerning the detention and restraint of your petitioner, and that your petitioner be ordered discharged from the detention and imprisonment aforesaid.

Dated: August 5, 1952.

/s/ PEDRO GONZALES,
Petitioner.

By /s/ EWING SIBBETT,
Attorney for Petitioner.

United States of America,
Northern District of California,
City and County of San Francisco—ss.

Ewing Sibbett, being first duly sworn, deposes and says:

That he is the attorney for the petitioner named in the foregoing petition and has subscribed the same; that he has read the same and knows the contents thereof; that said statements made are true to said attorney's best information and belief.

/s/ EWING SIBBETT.

Subscribed and sworn to before me this 5th day of August, 1952.

[Seal] /s/ PEARL STOCKWELL,
Notary Public in and for the City and County of San Francisco, State of California.

My Commission Expires January 14, 1953.

[Endorsed]: Filed August 5, 1952.

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE

Good cause appearing therefor, and upon reading the verified petition on file herein, It Is Hereby Ordered that Bruce Barber, District Director, Immigration and Naturalization Service for the Thirteenth Immigration District, appear before this Court on August 13, 1952, before the Honorable Michael J. Roche, Presiding Judge thereof, Post Office Building, San Francisco, California, at the hour of 10 o'clock in the forenoon of said day, then and there to show cause, if any he has, why a Writ of Habeas Corpus should not be issued herein as prayed for and that a copy of this Order be served upon the said Bruce Barber.

Dated: San Francisco, California, August 5, 1952.

/s/ MICHAEL J. ROCHE,
United States District Judge.

[Endorsed]: Filed August 5, 1952.

[Title of District Court and Cause.]

RETURN TO ORDER TO SHOW CAUSE

Comes now Bruce G. Barber, District Director, United States Immigration and Naturalization Service of San Francisco, California, hereinafter referred to as "respondent," to show cause why Writ of Habeas Corpus should not be issued, admits, denies and alleges as follows:

I.

Answering paragraph I, respondent denies the allegations contained therein. Respondent affirmatively asserts that petitioner is not a national of the United States but is, in fact, an alien, a native and citizen of the Philippine Islands, and has so been adjudged and declared on May 5, 1952, by the United States District Court for the Western District of Washington, Northern Division, Civil No. 3035. Copies of the Petition for Writ of Habeas Corpus, Amended Petition, Return to Order to Show Cause, Findings of Fact, Conclusions of Law, and Judgment of the Court are contained in the certified immigration file which is attached hereto and made part of this return.

II.

Answering paragraph II, respondent denies the allegations contained therein. Respondent admits that petitioner is at present detained by him at 630 Sansome Street, San Francisco, California, but affirmatively asserts that such detention is just and lawful.

III.

Answering paragraph III, respondent admits that a final order of deportation of the petitioner to the Philippine Islands has been made, and unless such deportation is stayed by this Honorable Court, petitioner will be so deported.

IV.

Answering paragraph IV, respondent admits that petitioner was born in the Philippine Islands and

at the age of 17, in the year 1930, entered the United States at the port of San Francisco, California, and has since resided in the United States. Respondent denies the other allegations contained in paragraph IV of the complaint.

V.

Answering the allegations contained herein, respondent has no knowledge, information or belief, and therefore denies the same.

Wherefore, respondent prays that the Order to Show Cause be discharged; that each and every relief sought by petitioner be denied; and that respondent recover his proper costs herein.

Dated: August 12, 1952.

BRUCE G. BARBER,
District Director, Immigration and Naturalization Service, San Francisco, California.

By /s/ ARTHUR J. PHELAN,
Acting District Director.

[Endorsed]: Filed August 13, 1952.

[Title of District Court and Cause.]

AMENDED PETITION FOR WRIT OF HABEAS CORPUS

Your petitioner respectfully shows:

I.

That he is a national of the United States and a resident of the City of Seattle, State of Washington.

II.

That he is unjustly and unlawfully detained and imprisoned by the authority of Bruce Barber, District Director, Immigration and Naturalization Service for the Thirteenth Immigration District, in the Detention Ward at 630 Sansome Street, San Francisco, California.

III.

That the cause or pretext for such detention is a certain final order of deportation made by the Immigration and Naturalization Service of the United States ordering that your petitioner be deported to the Philippine Islands and that he be imprisoned and detained until such deportation.

IV.

That your petitioner was born in the Philippine Islands and at the age of seventeen, in 1930, entered the United States at the Port of San Francisco, California, and has since legally and lawfully resided in the United States.

V.

That in the month of May or June, 1941, your petitioner was convicted in the Superior Court of the State of California in and for the County of Alameda, of a misdemeanor, to wit: assault with a deadly weapon, and was therefore sentenced to imprisonment for the term of one year in the County jail of said Alameda County. That your petitioner served ten months of the said sentence.

VI.

That your petitioner was in 1950 convicted in the City of Seattle, State of Washington, of the crime of felony, to wit, second degree burglary, and was sentenced under the indeterminate sentence law of the State of Washington to imprisonment at Walla Walla Penitentiary for a term the minimum period of which was to be set by the Parole Board of the said State of Washington, and the maximum term of which was fifteen years. That your petitioner served approximately two years in the said penitentiary for said offense.

VII.

That prior to your petitioner's release from the penitentiary at Walla Walla, Washington, your petitioner was served with a warrant of arrest by the Immigration and Naturalization Service of the United States, alleging that he was deportable on the ground that he had been twice sentenced to a term of more than one year for the commission of crimes involving moral turpitude. That thereafter your petitioner was ordered deported on the grounds stated in said warrant. That the sentences referred to in the said warrant were the two heretofore set forth in paragraphs V and VI hereinabove.

VIII.

That the said order of deportation has become final. That your petitioner is now detained by Bruce Barber, District Director of the Immigration and Naturalization Service, pursuant to the said order for deportation. That the said restraint, imprison-

ment and threatened deportation are void and illegal and in violation of the Constitution of the United States and the amendments thereof, and in violation of the statutes of the United States governing deportation, for the following reasons:

(1) That your petitioner has not been sentenced more than once to terms of imprisonment of one year or more because of conviction in this country of crimes involving moral turpitude in accordance with the provisions of 8 USCA §165.

(2) Your petitioner was not at the time of his conviction for the crime of misdemeanor, to wit, assault with a deadly weapon in Alameda County, California, in 1941, an alien, and does not thereby come within the class of aliens deportable under the terms of 8 USCA §155, or other applicable statutes of the United States regulating the deportation of aliens.

(3) Your petitioner has heretofore presented to the District Court of the United States for the Western District of Washington, Northern Division, at Seattle, Washington, a petition for writ of habeas corpus. That the said petition was by the said District Court denied. That the petition and argument had thereon did not present to the said District Court the issues of fact and of law that your petitioner believes are controlling in this cause, more particularly, the rule obtaining in the Ninth Circuit, as set forth in the case of Del Guercio vs. Gabot, 161 Fed. 2d 559, nor the issue of sentence on two occasions by reason of convictions of crimes in-

declared on May 5, 1952, by the United States District Court for the Western District of Washington, Northern Division, Civil No. 3035. Copies of the Petition for Writ of Habeas Corpus, Amended Petition, Return to Order to Show Cause, Findings of Fact, Conclusions of Law, and Judgment of the Court are contained in the certified immigration file which was attached to respondent's return to the original Order to Show Cause.

II.

Answering Paragraph II of the Amended Petition, respondent denies the allegations contained therein. Respondent admits that petitioner is at present detained by him at 630 Sansome Street, San Francisco, California, but affirmatively asserts that such detention is just and lawful.

III.

Answering Paragraph III of the Amended Petition, respondent admits that a final order of deportation of the petitioner to the Philippine Islands has been made, and unless such deportation is stayed by this Honorable Court, petitioner will be deported. Respondent denies all other allegations contained in Paragraph III.

IV.

Answering Paragraph IV of the Amended Petition, respondent admits the allegations contained the Philippine Islands and at the age of seventeen, in the year 1930, entered the United States at the Port of San Francisco, California, and has since

resided in the United States. Respondent denies the other allegations contained in Paragraph IV.

V.

Answering Paragraph V of the Amended Petition, respondent admits the allegations contained therein.

VI.

Answering Paragraph VI of the Amended Petition, respondent admits the allegations contained therein.

VII.

Answering Paragraph VII of the Amended Petition, respondent admits the allegations contained therein.

VIII.

Answering Paragraph VIII of the Amended Petition, respondent admits that petitioner is now detained by Bruce G. Barber, District Director, United States Immigration and Naturalization Service, pursuant to an order of deportation. That petitioner heretofore presented to the District Court of the United States for the Western District of Washington, Northern Division, at Seattle, Washington, a Petition for Writ of Habeas Corpus and that the said Petition was denied. Respondent denies all other allegations contained in Paragraph VIII. Respondent affirmatively asserts that the crimes referred to by petitioner do involve moral turpitude in accordance with the provisions of 8 U.S.C.A. 155. That petitioner, for the purposes of the Immigration Act of 1917, has been considered

an alien since the effective date of the Philippine Independence Act, to wit, May 1st, 1934. That petitioner, since the Treaty of July 4th, 1946, with the Republic of the Philippines, has been for all purposes considered as an alien and not a national of the United States. That the petitioner was found to be an alien and not a national of the United States by the District Court for the Western District of Washington, Northern Division. That the identical issue has previously been before the Court of Appeals for the Ninth Circuit, at which time the Court, in the case of Cabebe vs. Acheson, 183 F. 2d 795 at 801-802, held a Philippine in like circumstances to be an alien. That the District Court for the Western District of Washington, also held in the petitioner's case that:

> "It is immaterial that the alien held the status of a national when convicted of the first offense, where the person is an alien at the time of the institution of deportation proceedings and he has been convicted of the designated offenses, the statute is satisfied."

IX.

Answering Paragraph IX of the Amended Petition, respondent denies the allegations contained therein, in that he has no knowledge, information or belief as to the truth of such allegations.

Wherefore, respondent prays that the Order to Show Cause be discharged; that each and every re-

lief sought by petitioner be denied and that respondent recover his proper costs herein.

Dated: August 14, 1952.

BRUCE G. BARBER,
District Director, Immigration and Naturalization Service, San Francisco, California.

By /s/ A. W. HARGREAVES,
Acting District Counsel.

[Endorsed]: Filed August 14, 1952.

In the United States District Court for the Northern District of California, Southern Division

No. 31724

In the Matter of
The Application of PEDRO GONZALES for a Writ of Habeas Corpus.

JUDGMENT

The above-entitled cause coming on for hearing on the 15th day of August, 1952, at 10 o'clock a.m. before the above-entitled Court, Honorable Michael J. Roche, presiding, Lloyd E. McMurray appearing as attorney for the petitioner above named, and Chauncey Tramutolo, United States Attorney for the Northern District of California, and Edgar R. Bonsall, Assistant United States Attorney for said district appearing as attorneys for the respondent,

and the evidence having been received and the Court having fully considered the same;

Now, Therefore, It Is Ordered, Adjudged and Decreed by this Court,

That the Court finds in favor of the respondent and against the petitioner, and

That the Petition for Writ of Habeas Corpus be and the same is hereby denied, and

That the Order to Show Cause be and the same is hereby discharged.

So Ordered: August 19th, 1952.

/s/ MICHAEL J. ROCHE,
United States District Judge.

[Endorsed]: Filed August 19, 1952.
Entered August 20, 1952.

[Title of District Court and Cause.]

NOTICE OF APPEAL

United States Court of Appeals for the Ninth Circuit [Under Rule 73 (b)]

Notice is hereby given that Pedro Gonzales, appellant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on August 19, 1952, and from the whole thereof.

GLADSTEIN, ANDERSEN & LEONARD,

By /s/ LLOYD E. McMURRAY,
Attorneys for Appellant.

[Endorsed]: Filed September 15, 1952.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO TRANSCRIPT OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing documents are the originals filed in the above-entitled matter, and that they constitute the record on appeal as designated by the attorneys for the appellant herein:

Order to show cause.

Return to order to show cause.

Amended Petition for writ of habeas corpus.

Amended Return to order to show cause.

Judgment.

Notice of appeal.

Appellant's designation of record on appeal.

In Witness Whereof I have hereunto set my hand and affixed the seal of said District Court this 3rd day of October, 1952.

[Seal] C. W. CALBREATH,
Clerk,

By /s/ C. M. TAYLOR,
Deputy Clerk.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO SUPPLEMENTAL RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of Califor-

nia, do hereby certify that the foregoing documents, listed below, are the originals filed in the above-entitled matter and that they constitute a supplement to the record on appeal as designated by the Attorneys for the Appellee:

Petition for writ of habeas corpus.

Respondent's designation of record on appeal.

In Witness Whereof I have hereunto set my hand and affixed the seal of said District Court this 14th day of October, 1952.

[Seal] C. W. CALBREATH,
Clerk,

By /s/ C. M. TAYLOR,
Deputy Clerk.

[Endorsed]: No. 13566. United States Court of Appeals for the Ninth Circuit. Pedro Gonzales, Appellant, vs. Bruce G. Barber, District Director, Immigration and Naturalization Service, San Francisco, California, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed October 3, 1952.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 13566

PEDRO GONZALES,

Appellant,

vs.

BRUCE G. BARBER, etc.,

Appellee.

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL

I.

The Court below erred in denying the petition for habeas corpus and discharging the order to show cause without a hearing on the merits thereof.

II.

Appellant cannot lawfully be imprisoned or detained on the ground relied upon by respondent for the following principal reasons:

A. Appellant has not been sentenced more than once to terms of imprisonment of one year or more because of conviction in this country of crimes involving moral turpitude.

B. Appellant was not at the time of his conviction for the crime of misdemeanor in 1941 an alien, and does not by reason of the said conviction come within the class of aliens deportable under the terms of 8 USCA §155, or other applicable statutes of the United States regulating the deportation of aliens.

III.

The Court below erred in dismissing the petition and discharging the order to show cause, in that the court thereby sustained a void and illegal order of deportation which was before the court of review.

GLADSTEIN, ANDERSEN & LEONARD,

By /s/ LLOYD E. McMURRAY,
Attorneys for Appellant.

[Endorsed]: Filed October 10, 1952.

[Title of Court of Appeals and Cause.]

STIPULATION AND ORDER

It Is Hereby Stipulated by and between counsel for Appellant and counsel for Appellee that the portion of the Immigration and Naturalization Service file, Exhibit "A," referred to in Appellee's Return to Order to Show Cause need not be printed in the Transcript of the appeal herein but may be considered in its original form.

Dated: October 20, 1952.

/s/ CHAUNCEY TRAMUTOLO,
United States Attorney,
Attorney for Appellee.

By /s/ EDGAR R. BONSALL,
Assistant U. S. Attorney.

/s/ LLOYD E. McMURRAY,
Attorney for Appellant.

So Ordered:

/s/ WILLIAM DENMAN,
Chief Judge.

/s/ WILLIAM HEALY,

/s/ WALTER L. POPE,
United States Circuit Judges.

[Endorsed]: Filed October 23, 1952.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 13566

PEDRO GONZALES, APPELLANT

vs.

BRUCE G. BARBER, DISTRICT DIRECTOR, ETC., APPELLEE

Appeal from the United States District Court for the Northern District of California, Southern Division

PROCEEDINGS HAD IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Excerpt from Proceedings of Monday, July 27, 1953

Before: DENMAN, *Chief Judge,* HEALY and BONE, *Circuit Judges*

ORDER OF SUBMISSION

Ordered appeal herein argued by Mr. Lloyd W. McMurray, counsel for the appellant and by Mr. C. Elmer Collett, Assistant United States Attorney, counsel for the appellee, and submitted to the court for consideration and decision.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Excerpt from Proceedings of Tuesday, September 15, 1953

Before: DENMAN, *Chief Judge,* HEALY and BONE, *Circuit Judges*

ORDER DIRECTING FILING OF OPINIONS AND FILING AND RECORDING OF JUDGMENT

Ordered that the typewritten opinion and dissenting opinion of Bone, C. J., this day rendered by this Court in above cause be forthwith filed by the clerk, and that a judgment be filed and recorded in the minutes of this court in accordance with the majority opinion rendered.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 13,566

September 15, 1953

PEDRO GONZALES, APPELLANT

vs.

BRUCE G. BARBER, DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE, SAN FRANCISCO, CALIFORNIA, APPELLEE

Appeal from the United States District Court for the Northern District of California, Southern Division

Before: DENMAN, *Chief Judge*, and HEALY and BONE, *Circuit Judges*

DENMAN, *Chief Judge:*

This is an appeal from a judgment of the United States District Court for the Northern District of California, denying a petition for a writ of habeas corpus to a native of the Philippine Islands held for deportation.

The questions presented are: (1) whether appellant has been twice convicted of crimes involving moral turpitude and (2) whether the lawful coming into the continental United States from its possession the Philippine Islands by a native thereof prior to the Philippine Independence Act of 1934 is an "entry" into the United States within the provisions of § 19 of the Immigration Act of 1917, formerly 8 U.S.C. § 155.

Gonzales, a native of the Philippine Islands, lawfully came into the continental United States at the age of 17 in 1930, and has since resided there. In 1941, he was charged with the crime of assault with a deadly weapon with the intent to commit murder. He was tried and convicted of the lesser crime of assault with a deadly weapon, and was sentenced to a term of one year in the Alameda County Jail, of which he served ten months. In 1950, Gonzales was convicted of the crime of second-degree burglary and was sentenced under Washington's indeterminate sentence law to the State Penitentiary at Walla Walla and there served two years.

A warrant of arrest was issued by the Immigration and Naturalization Service on October 4, 1950, charging that after his entry into the United States he had "been sentenced more than once to imprisonment for terms of one year or more because of conviction in this country of crimes involving moral turpitude, committed after entry, to-wit: Assault with a deadly weapon, and burglary in the second degree." Warrant hearing proceedings were then held at

which appellant was represented by counsel, and thereafter a warrant for the deportation was issued on July 25, 1951.

After the Order of Deportation had been issued, appellant petitioned for a writ of habeas corpus to the United States District Court for the Western District of Washington, Northern Division. The petition was denied. Thereafter, Gonzales was transferred to San Francisco to effect his deportation. There, the current petition for habeas corpus was filed and denied by the district court and this appeal followed.

Gonzales first claims that the crime of assault with a deadly weapon, of which he was convicted in the California courts, does not —under the circumstances involved—constitute a crime involving moral turpitude. He argues that the crime was only a misdemeanor inasmuch as he was not sentenced to the State Prison. See California Penal Code § 17. While this is true, it is irrelevant. The gravity of the punishment imposed upon the alien is not determinative of the question of whether the crime is one involving moral turpitude. *U. S. ex rel. Zaffarano* v. *Corsi*, 63 F. 2d 757 (Cir. 2).

Secondly, he argues that the crime is not, per se, one which involves moral turpitude. A California case is cited in which it was held that an assault with a deadly weapon was not such a crime for purposes of disbarment of an attorney. *In the Matter of Disbarment of Rothrock*, 16 Cal. 2d 449. However, there the California court was concerned with whether the crime involved such moral turpitude as to reflect upon the attorney's moral fitness to practice law, a state question. Here we are faced with the federal question of whether the crime involves such moral turpitude as to show that the alien has a criminal heart and a criminal tendency—as to show him to be a confirmed criminal. *Fong Haw Tan* v. *Phelan*, 333 U.S. 6, 9. In the federal law, assault with a deadly weapon is such a crime. *U. S. ex rel, Zaffarano* v. *Corsi, supra; U. S. ex rel Mazillo* v. *Day*, 15 F. 2d 391 (S.D. N.Y.); *U. S. ex rel. Ciccerelli* v. *Curran*, 12 F. 2d 394 (Cir. 2); *Weedin* v. *Tayokichi Yamada*, 4 F. 2d 455 (Cir. 9).

Gonzales next contends that he is not within the statutory class referred to in the deportation order. He claims that he is not an alien but a national of the United States. This contention is without merit. Gonzales became an alien on July 4, 1946, upon the proclamation of Philippine Independence. *Mangaoang* v. *Boyd.* — F. 2d — (Cir. 9) [No. 13,537, June 17, 1953]; *Cabebe* v. *Acheson*, 183 F. 2d 795 (Cir. 9).

Gonzales claims that he is not within the intent of § 19 of the Immigration Act of 1917, former 8 U.S.C. § 155 (the applicable portions of which are set forth in the margin).[1] His argument

[1] § 19, Immigration Act of 1917: ". . . except as hereinafter provided, any alien who, after May 1, 1917, is sentenced to impris-

essenitally is that he was not an alien until Philippine Independence and hence that as to acts occurring prior to the time the statute is inapplicable. Section 8(a)(1) of the Philippine Independence Act of 1934, 48 Stat. 456, 462, provides in part that: "For the purposes of the Immigration Act of 1917 . . . and all other laws of the United States relating to the immigration, exclusion, or expulsion of aliens, citizens of the Philippine Islands who are not citizens of the United States shall be considered as if they were aliens."

The District Director argues that this statute compels a conclusion that Gonzales was to be treated as an alien at the time he was convicted of assault with a deadly weapon in 1941. The Immigration Act of 1917 was one of the statutes specifically envisioned by Congress in providing that for its purposes Filipinos "shall be considered as if they were aliens." Since both convictions occurred after the effective date of the Philippine Independence Act of 1934, Gonzales is properly subject to deportation under § 19 of the Immigration Act of 1917 if he is otherwise subject to its terms.

Gonzales contends that he is not otherwise subject to the terms of that statute, because when he came into the United States in 1930, he did not make the "entry" required by § 19 of the Immigration Act of 1917 cited *supra*. This contention is meritorious. In *Mangaoang* v. *Boyd*, *supra*, it was stated, one judge reserving judgment, that a Filipino who came into the United States prior to the Philippine Independence Act had not technically "entered" the United States and hence that Section 22 of the Internal Security Act of 1950 (providing that aliens who, at the time of entering the United States or at any time thereafter, are members of the Communist Party of the United States, shall be deported) was inapplicable. Here we are dealing with the portion of Section 19 of the Immigration Act of 1917 concerning convictions for two crimes involving moral turpitude "committed at any time after entry." The question then is whether Gonzales had made an "entry" as that word is used in the clause last quoted.

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onment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, *committed within five years after the entry of the alien to the United States*, or who is sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving moral turpitude, committed *at any time after entry;* . . . shall, upon the warrant of the Attorney General, be taken into custody and deported. . . . The provisions of this section, with the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned irrespective of the time of their entry into the United States; and shall also apply to the cases of aliens who come to the mainland of the United States from the insular possessions thereof." (Emphasis supplied.)

In *U. S. ex rel. Volpe* v. *Smith*, 289 U.S. 422, 425, "entry" was defined as including "any coming of an alien from a foreign country into the United States." This definition was followed in subsequent cases, *Delgadillo* v. *Carmichael*, 332 U.S. 338; *U. S. ex rel. Schlimmgen* v. *Jordan*, 164 F. 2d 633 (Cir. 7), and has been adopted by the Immigration and Nationality Act of 1952, § 101(a)(13).[2] At the time Gonzales arrived in this country in 1930, he was not an *alien* and hence not covered though coming from a foreign country or outlying possession, but was a United States *national* coming from an outlying possession. There has been no "entry" by an alien, and hence there have not been two crimes involving moral turpitude "committed at any time after entry." It follows that Gonzales is not subject to deportation under Section 19 of the Immigration Act of 1917.

We recognized the fact that this definition of the word "entry" is not its plain and obvious meaning, but we also recognize that the word has become a word of art. While it is true that the ultimate holdings in *Volpe* v. *Smith*, *supra*, and *U. S. ex rel. Schlimmgen* v. *Jordan*, *supra*, were that the coming of an alien into the United States for the second time was an "entry," we do not rely upon the holding of these cases but merely cite them as showing the narrow meaning which has been ascribed to the word.

To the contention that the holdings in *Delgadillo* v. *Carmichael*, *supra*, and *Di Pasquale* v. *Karnuth*, 158 F. 2d 878 (Cir. 2), were necessary to avoid an obvious injustice and hence do not support our position, it should be noted that not all judges agree on what is an "obvious injustice"; in fact this court did not see the obvious injustice in the *Delgadillo* case, *Del Guercio* v. *Delgadillo*, 159 F. 2d 130 (Cir. 9). No appellate case has been found which ascribes any other meaning to the term "entry" than that used here. The meaning of a term used in a statute cannot mean one thing for one situation and something else for a different situation else the law would not have that reasonable certainty which the people have a right to expect.

The definition of entry set out in § 101(a)(13) of the Immigration and Nationality Act of 1952 is not cited because we think it controlling in this case, but only because it shows that Congress, in revising the immigration and nationality laws, recognized what we hold to be the judicial meaning of the term in relation to immigration and nationality statutes.

For the contention that we should give the plain and ordinary

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[2] Immigration and Nationality Act of 1952, Sec. 101(a)(13):

"(13) The term 'entry' means any coming of an alien into the United States, from a foreign port or place or from an outlying possession, whether voluntarily or otherwise, . . ."

meaning of the word entry is quoted a passage written by Justice Rutledge speaking for a majority of the Supreme Court in a case involving a *criminal* statute, *United States* v. *Brown*, 333 U.S. 18, 25, 26. We prefer to rely upon the statement of Justice Douglas made on the same day the *Brown* case was decided speaking for a unanimous court in a *civil* case involving Section 19 of the Immigration Act of 1917, in which this court was reversed for giving a broad construction of the very statute with which we are here concerned. *Fong Haw Tan* v. *Phelan*, 333 U.S. 6, 10:

> "We resolve the doubts in favor of that construction because deportation is a drastic measure and at times the equivalent of banishment or exile, *Delgadillo* v. *Carmichael*, 332 U.S. 388. It is the forfeiture for misconduct of a residence in this country. Such a forfeiture is a penalty. To construe this statutory provision less generously to the alien might find support in logic. But since the stakes are considerable for the individual, we will not assume that Congress meant to trench on his freedom beyond that which is required by the narrowest of several possible meanings of the words used.

The word entry has been here given the narrow meaning which has been ascribed to it in many cases. See *Mangaoang* v. *Boyd*, — F. 2d —, — (Cir. 9) [No. 13,537, June 17, 1953] and the cases cited in footnote 5.

The judgment of the district court is reversed and the cause remanded with instructions to issue the writ and to order Gonzales' discharge.

BONE, *Circuit Judge*, Dissenting:

I dissent.

The majority correctly holds that Gonzales has twice been convicted in this country of crimes involving moral turpitude within the meaning of § 19 of the Immigration Act of 1917, (formerly 8 U.S.C.A. Sec. 155). From the record before us it is clear that appellant came to the United States in 1930 and has since resided continuously therein. He is an alien and is subject to the provisions of Section 155, *supra;* an order for his deportation has been issued on the ground that he has been convicted and sentenced for the offenses above mentioned. Therefore he is deportable.

When Gonzales came to the United States he quite obviously made an "entry" into this country in the usual and accepted sense of that term. And generally the plain and obvious meaning of a statute is preferred to a curious, hidden signification. *Payne* v. *Ostrus*, 8 Cir., 50 F. 2d 1039; *United States* v. *Missouri Pacific Ry. Co.*, 8 Cir., 213 Fed. 169. The majority, however, attaches to the

word "entry" in the applicable expulsion statute a meaning which is certainly curious and very well hidden. The word, they say, means entry by aliens and by no other class of persons. It is urged that since at the time of his coming to the United States Gonzales was *a national* and beyond the reach of *all laws relating to aliens*, he did not make an "entry" and therefore is not deportable.

I reserved judgment when the same proposition was expressed by the majority in *Mangaoang* v. *Boyd*, 9 Cir., — F. 2d — (decided June 17, 1953). The decision in that case was supportable upon another ground. After considering argument of the same question here, I cannot accept the view now advanced by the majority.

Ordinarily when a court declines to apply a statute according to the plain meaning of its terms it is for one or more of the following reasons: (1) the statute itself clearly indicates that the words are used in a special, technical sense; (2) the words have an established judicial meaning in the field of law in which the statute is to operate; (3) to give the words of the statute their plain meaning would be inconsistent with the object and purpose of the statute as a whole; (4) to apply the statute according to its terms would be to attribute to Congress a capricious purpose and lead to an unconscionable result.

First. The majority do not, and they could not, justify their "highly technical" construction of the word "entry" by an analysis of the statute itself. Section 19 of the Immigration Act of 1917, quoted in footnote 1 of the majority opinion, provides in pertinent part for deportation of aliens upon their conviction of certain crimes committed "at any time after entry." I see nothing in this language that induces the conclusion that the person involved must have been an alien at the time of his coming into the United States in order to be deportable.[1]

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[1] The case of *Eichenlaub* v. *Shaughnessy*, 338 U.S. 521, is helpful here. The question in that case was whether the person sought to be deported must have been an alien at the time of his conviction of a violation of the Espionage Act of 1917 in order to be deportable. The applicable expulsion provision made deportable "aliens who since August 1, 1914, have been or may hereafter be convicted of any violation or conspiracy to violate" the Espionage Act of 1917. The Supreme Court held an alien deportable under that provision although at the time of his conviction of espionage he was a naturalized citizen of the United States, saying, "* * * the Act does not require that the offenders reached by it must have had the status of aliens at the time they were convicted." 33 U.S. at 530.

In light of that decision, I do not see how it can be seriously contended that the language of § 19 of the Immigration Act of 1917, standing alone, requires that the person involved must have been

Second. The majority rely upon certain decisions of the courts as establishing that the term "entry" is and must be regarded as a word of art.

Aside from the majority holding in our *Mangaoang* case, *supra*, to that effect, the cases do not support application of this "word of art" doctrine except under such exceptional circumstances as were present in the cases of *Delgadillo* v. *Carmichael*, 332 U.S. 388, and *Di Pasquale* v. *Karnuth*, 2 Cir., 158 F. 2d 878. In those cases it was held that when an alien's departure to a foreign place was *not intended or voluntary* his return was not an "entry" within the meaning of a statute subjecting aliens to deportation for crimes committed "within five years after entry." in the *Di Pasquale* case the critical "entry" occurred when the alien, while asleep in a railroad sleeping car, was transported into Canada and back into the United States by the route of a passenger train on a journey from Buffalo to Detroit. In the *Delgadillo* case the "entry" occurred when the alien, a member of the crew of an American vessel, was plunged into the sea as a result of the torpedoing of his ship, then rescued and taken care of in Cuba for a short time before returning to the United States. In each case, but for the fortuitous departure and "re-entry", the alien would not have been subject to deportation. In both cases the courts, with good reason, concluded that it would be a capricious and unconscionable application of the statute to hold the alien deportable under these extraordinary circumstances. By way of elaboration we might well quote the Supreme Court in the *Delgadillo case*, 332 U.S. at 391, where it is said: "We might as well hold that if he had been kidnapped and taken to Cuba, he made a statutory 'entry' on his voluntary return. Respect for law does not thrive on captious interpretations." This illustrates how the Supreme Court met exceptional circumstances by applying exceptional treatment to avoid an obvious injustice.

The majority also relies upon *Volpe* v. *Smith*, 289 U.S. 422, and *United States ex rel. Schlimmgen* v. *Jordan*, 7 Cir., 164 F. 2d 633. In those cases it was held that the coming of an alien into the United States for the second time is an "entry" within the meaning of a statute subjecting aliens to deportation for crimes committed "prior to entry." Why these two cases are thought to support the

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an alien at the time of his coming into the United States, as a condition precedent to his deportation. The argument for *the requirement* of simultaneous alienage and conviction under a statute making deportable "aliens who * * * have been or may hereafter be convicted * * *" (as in the *Eichenlaub* case), would appear to be even stronger than the argument (here accepted by the majority) for requiring simultaneous alienage and "entry" under a statute making the alien deportable upon conviction of certain crimes if committed "at any time after entry."

majority view on the "entry" question here is not clear to me. My bewilderment increases when I read the language of the Supreme Court in support of its holding in the *Volpe* case: "An examination of the Immigration Act of 1917, we think, *reveals nothing sufficient to indicate that Congress did not intend the word 'entry' in § 19 should have its ordinary meaning.*" (Emphasis mine.) 289 U.S. at 425.

These four cases do not support the majority holding. Nothing can be worked out *arguendo* from them which might bear on the question whether the coming of a *national* into the United States is an "entry" within the meaning of § 19 of the Immigration Act of 1917. The majority's reliance upon language in the *Volpe*, *Delgadilla* and *Schlimmgen* cases that an "entry" is "any coming of an alien from a foreign country into the United States" is a glaring example of reading language out of context. For in those cases the persons involved were, and always had been, aliens. The courts were therefore not concerned with making *a distinction* between entry by aliens and entry by any other class of persons nor did they purport to make such distinction. The language used had reference only to the very different questions involved in those cases.

In the *Mangaoang* case, though not in the instant case, the majority cited *Del Guercio* v. *Gabot*, 9 Cir., 161 F. 2d 559. As will be pointed out shortly, this court did not in that case make any attempt to define the word "entry." The majority's interpretation of the word "entry," I submit, has no judicial precedent to support it.[2]

Third. If the word "entry" were given its plain and obvious meaning, would the result here be inconsistent with the object and purpose of the expulsion provisions of the Immigration Act of 1917 considered as a whole?

It is obviously futile to search for a Congressional purpose concerning the deportability of Filipinos in an Act pertaining to

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[2] Even if it be assumed that the definition of "entry" set out in § 101(a)(13) of the Immigration and Nationality Act of 1952, quoted in footnote 2 of the majority opinion, is in line with the definition given that word by the majority here, that Act is not applicable to this case. And I note in passing that an interesting question might arise under that Act, in view of § 326 thereof, which provides:

"Sec. 326. Any person who (1) was a citizen of the Commonwealth of the Philippines on July 2, 1946, (2) *entered* the United States *prior* to May 1, 1934, and (3) has, since such *entry*, resided continuously in the United States shall be regarded as having been lawfully admitted to the United States for permanent residence for the purpose of petitioning for naturalization under this title." (Emphasis mine.)

aliens passed at a time when Filipinos were nationals of the United States and long before they were made subject to its terms. But evidence of Congressional purpose in this regard may be found elsewhere. From the time of the passage of the Philippine Independence Act of 1934 (48 Stat. 456, *et seq.*) until the Proclamation of Philippine Independence on July 4, 1946, the Independence Act controlled the *status* of citizens of the Philippines in the United States. If by that Act Filipinos such as Gonzales (who entered the United States prior to its passage) were made subject to the alien deportation statues, it could hardly be contended that somehow and in some undisclosed manner they obtained complete immunity from deportation when the Independence Act became obsolete and Filipinos became aliens by the Proclamation of Philippine Independence in 1946.

Section 8 of the Philippine Independence Act provided in pertinent part that "For the purposes of the Immigration Act of 1917 * * * and all other laws relating to the * * * expulsion of aliens, citizens of the Philippine Islands who are not citizens of the United States shall be considered as if they were aliens."

Under the majority opinion an exception must be read into this provision. Insofar as the liability of Filipinos to expulsion is concerned, the majority would say that the Independence Act did not apply to those who on its effective date were *residents* of the United States. For these Filipinos, they say, made no "entry" into the United States and are therefore not subject to deportation.[3]

I cannot accept this view. The Independence Act did not distinguish between resident and non-resident Filipinos. And as has been pointed out, no court prior to the very recent *Mangaoang* case had ever held or even inferred that the word "entry" in the expulsion statutes meant entry by an alien only. If we today give the word this peculiar and highly technical construction and conclude therefrom that Congress meant to except resident Filipinos when it made Philippine citizens "aliens" *for the purposes of the expulsion statutes*, we attribute a remarkable subtlety of expression to that legislative body. It seems incredible to me that Congress meant to exclude the great body of Filipinos residing in the United States in 1934 from the sweep of § 8 of the Independence Act when it did not do so in express terms.

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[3] Under the majority opinion it may be that those Filipinos who at the time of the passage of the Independence Act resided in the United States and who subsequently departed to a foreign place and then returned (i.e., made an "entry") would be subject to the alien deportation statutes. But this is the only foreseeable instance in which Filipinos residing in the United States in 1934 might be subject to deportation under the majority's holding.

I think the Independence Act meant exactly what it said; that by that Act Filipinos not citizens of the United States were made subject to the expulsion provisions of our immigration acts. The language included both resident and non-resident Filipinos. This being so, Gonzales became subject to the expulsion statutes upon passage of the Independence Act and remained so subject when he became an alien by the Proclamation of Philippine Independence in 1946. From the available evidence on the subject, I conclude that the majority's strained construction of § 19 of the Immigration Act flies in the face of a clear congressional purpose.

Despite the statements in the majority opinion in the *Mangaoang* case, *Del Guercio* v. *Gabot*, *supra*, is not opposed to the view here expressed. In that case this court held (1) that where a Filipino was sought to be deported under so much of § 19 of the Immigration Act of 1917 as provided for expulsion upon conviction of crimes committed "within five years after entry," the entry was an essential element of the deportable conduct; and (2) the Independence Act would therefore not be retroactively applied to stamp the coming of the Filipino into the United States an "entry" within the meaning of the deportation provision.

The opinion in that case will be searched in vain for any statement that the word "entry" means the coming of an *alien only* into the United States. Had that been the view of this Court, the question there involved could have been speedily decided upon that ground. The decision rested upon a more solid basis. The Independence Act was by its terms prospective in operation. The applicable expulsion provision made an alien deportable for a crime *only* if the crime was committed within five years after entry. The specific time relationship between the "entry" and the commission of the crime was made vital. With good reason, therefore, this Court considered the "entry" an essential element of the deportable conduct, and refused to retroactively apply the Independence Act so as to stamp the coming of the Filipino prior to its passage an "entry" within the meaning of the expulsion provision.

The *Del Guercio* case immunized from deportation only those Filipinos who came to the United States within five years prior to the Independence Act and committed a deportable offense after the passage of the Act and within five years after entry. It did not, as did the *Mangaoang* case and the instant case, give Filipinos residing in the United States at the time of the passage of the Independence Act a blanket immunity.

The distinction between the *Del Gueirco* case and the instant case is clear. Under that portion of § 19 of the Immigration Act of 1917 here applicable, an alien is deportable upon conviction of two crimes of a described class if committed "at any time after entry." In such case the "entry" is not, in any real sense, an element of the deport-

able conduct, any more than is the birth of an accused an element of the crime with which he is charged. The application of the expulsion statute to Gonzales involves no retroactive application of the Independence Act. It does not make the Independence Act reach back to stamp acts of Gonzales prior to its passage "elements" of the conduct for which he has been ordered deported.

Fourth. There might be some justification for the majority's disposition of this case if to uphold the order of deportation would be to attribute to Congress an unconscionable purpose. But in this case we have an alien who since being subjected to the alien expulsion statutes has been twice convicted of serious crimes involving moral turpitude. Permitting the order of deportation to stand could scarcely be said to be more harsh than was the result in the *Volpe* or *Eichenlaub* cases, *supra*, where the Supreme Court did not permit any squeamishness to deter it from applying the expulsion statutes according to their terms.

Certainly deportation may be punishment but the rule of strict construction is not a license to courts to create ambiguity where there is none, to proceed with indifference to a statute to reach a result which the court might think desirable. As was said by Justice Rutledge, speaking for the Supreme Court in *United States* v. *Brown*, 333 U.S. 18, 25, 26:

> "The canon in favor of strict construction is not an inexorable command to override common sense and evident statutory purpose. It does not require magnified emphasis upon a single ambiguous word in order to give it a meaning contradictory to the fair import of the whole remaining language. As was said in *United States* v. *Gaskin*, 320 U.S. 527, 530, the canon 'does not require distortion or nullification of the evident meaning and purpose of the legislation.' Nor does it demand that a statute be given the 'narrowest meaning'; it is satisfied if the words are given their fair meaning in accord with the manifest intent of the lawmakers."

The judgment of the lower court should be affirmed.

(Endorsed:) Opinion and Dissenting Opinion. Filed Sep. 15, 1953. Paul P. O'Brien, Clerk.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 13566

PEDRO GONZALES, APPELLANT

vs.

BRUCE G. BARBER, ETC., APPELLEE

JUDGMENT

Appeal from the United States District Court for the Northern District of California, Southern Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California, Southern Division and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is, reversed, and that this cause be, and hereby is remanded to the said District Court with instructions to issue the writ and to order Gonzales' discharge.

(Endorsed:) Filed September 15, 1953. Paul P. O'Brien, Clerk.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 13566

PEDRO GONZALES, APPELLANT

vs.

BRUCE G. BARBER, DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE, SAN FRANCISCO, CALIFORNIA, APPELLEE

CERTIFICATE OF CLERK, U. S. COURT OF APPEALS FOR THE NINTH CIRCUIT, TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

I, Paul P. O'Brien, as Clerk of the United States Court of Appeals for the Ninth Circuit, do hereby certify the foregoing thirty-nine (39) pages, numbered from and including 1 to and including 39, to be a full, true and correct copy of the entire record of the above-entitled case, together with original exhibits transmitted herewith, in the said Court of Appeals, made pursuant to request of Honorable Robert L. Stern, Acting Solicitor General of the United States, coun-

sel for the appellee, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 2nd day of October, 1953.

[SEAL.] (S.) PAUL P. O'BRIEN,
Clerk.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1953 278721 454

SUPREME COURT OF THE UNITED STATES

No. 431, October Term, 1953

BRUCE G. BARBER, DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE, SAN FRANCISCO, CALIFORNIA, PETITIONER

vs.

PEDRO GONZALES

Order allowing certiorari. Filed December 14, 1953

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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v.

PEDRO GONZALES

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals from the Ninth Circuit, which directed that the judgment of the district court be reversed and the cause remanded with directions to order the respondent's release from custody.

OPINIONS BELOW

The majority and dissenting opinions below (R. 25-35) have not yet been reported.

JURISDICTION

The judgment of the Court of Appeals was entered September 15, 1953 (R. 36). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a Filipino who entered the United States prior to the enactment of the Philippine Independence Act of 1934, but who was twice convicted of crimes involving moral turpitude after enactment of that statute, may be deported under Section 19 of the Immigration Act of 1917.

STATUTES INVOLVED

Section 19(a) of the Immigration Act of February 5, 1917, 39 Stat. 889, as amended, formerly 8 U.S.C. 155(a), provides in pertinent part:

> * * * except as hereinafter provided, any alien who is hereafter sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States, or who is hereafter sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving moral turpitude, committed at any time after entry * * * shall, upon the warrant of the Attorney General, be taken into custody and deported * * *.

The Act of March 24, 1934, known as the "Philippine Independence Act", 48 Stat. 456, c. 84, for-

merly 48 U.S.C. 1232 *et seq.*, provided in pertinent part:

> Sec. 8. (a) Effective upon the acceptance of this Act by concurrent resolution of the Philippine Legislature or by a convention called for that purpose, as provided in section 17—
>
> (1) For the purposes of the Immigration Act of 1917, the Immigration Act of 1924 (except section 13 (c)), this section, and all other laws of the United States relating to the immigration, exclusion, or expulsion of aliens, citizens of the Philippine Islands who are not citizens of the United States shall be considered as if they were aliens. For such purposes the Philippine Islands shall be considered as a separate country and shall have for each fiscal year a quota of fifty.
>
> * * * * *
>
> Sec. 14. Upon the final and complete withdrawal of American sovereignty over the Philippine Islands the immigration laws of the United States (including all the provisions thereof relating to persons ineligible to citizenship) shall apply to persons who were born in the Philippine Islands to the same extent as in the case of other foreign countries.

STATEMENT

Respondent, a native of the Philippine Islands, entered the United States in 1930 at the age of seventeen (R. 9, 14). In 1941, he was convicted in the Superior Court of the State of California of the crime of assault with a deadly weapon and

was sentenced to imprisonment for one year (R. 9, 15). In 1950, he was convicted of second degree burglary in the state of Washington and was sentenced under the indeterminate sentence law of that state for a term, the minimum of which was to be set by the Parole Board, and the maximum of which was fifteen years. He served two years for said offense (R. 10, 15).

In July, 1951, after a hearing, respondent was ordered deported under Section 19 of the Immigration Act of 1917 (*supra,* p. 2) as an alien who after entry had been sentenced more than once to imprisonment for terms of one year or more for crimes involving moral turpitude (R. 10, 14, 15). After he was taken into custody for deportation, he filed a petition for a writ of habeas corpus, subsequently amended (R. 8-13), in which he claimed to be a national of the United States and also attacked the validity of the deportation order on the grounds that (1) the crime of which he was convicted in California was not one involving moral turpitude, and (2) he was not within the intent of Section 19 of the Immigration Act of 1917 since he was a national of the United States at the time the California crime was committed. The district court dismissed the petition (R. 18).[1]

On appeal, the Court of Appeals for the Ninth Circuit reversed the order of the district court (R. 36), one judge dissenting (R. 29-35). The

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[1] A previous petition for habeas corpus brought in the United States District Court for the Western District of Washington had also been dismissed (R. 11, 15).

court rejected three of petitioner's contentions—(1) that the crime of assault with a deadly weapon was not a crime involving moral turpitude; (2) that petitioner remained a national of the United States after Philippine independence in 1946; (3) that Section 19 was inapplicable to his case because he was a national of the United States when the first offense was committed (R. 25-27).[2] A majority of the court below held, however, that petitioner was not deportable under Section 19 of the Immigration Act of 1917 because, having entered in 1930 as a national of the United States, he had made no "entry" within the terms of that section providing for deportation of aliens convicted of two crimes involving moral turpitude "committed at any time after entry" (R. 27-29). This holding is in accord with the same court's previous ruling that a Filipino who came to the United States before the Independence Act of 1934 had not entered the United States and was therefore not deportable under Section 22 of the Internal Security Act of 1950, a ruling which was one of alternative grounds of the court's decision in *Mangaoang* v. *Boyd,* 205 F. 2d 553, petition for certiorari pending No. 345, this Term.

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[2] With respect to this contention, the Court pointed out that under Section 8(a)(1) of the Philippine Independence Act of 1934 (*supra*, p. 3), Filipino citizens who were nationals of the United States were, for the purposes of laws relating to immigration, exclusion or expulsion, to be "considered as if they were aliens," and that petitioner's convictions for crimes occurred after the effective date of that act.

REASONS FOR GRANTING THE WRIT

In the petition for a writ of certiorari filed on behalf of the government in the *Mangaoang* case, No. 345, this Term, it was suggested that that decision, although directly involving only Section 22 of the Internal Security Act of 1950, would probably affect the status of Filipino non-citizens who committed crimes or other acts specified as grounds for deportation, and that, in view of the large number of Filipinos in the United States, the decision would have far-reaching impact. The decision in the instant case proves the correctness of that prophecy as to criminal acts. Moreover, there are already at least two cases in the district courts and three cases before the Court of Appeals for the Ninth Circuit which involve issues presented by the *Mangaoang* and the instant case. Indeed, as was pointed out in the *Mangaoang* petition, the decisions involve more than the status of Filipinos. Under the definition given to the term "entry" in these cases, any person who was not an alien at the time of his coming into the United States would not be deportable under any section of the immigration laws dealing, as many of them do, with acts committed after entry.

We submit that the dissenting judge below is clearly correct in his view that, as to those acts which are made a basis of deportation "at any time after entry," the " 'entry' is not, in any real sense, an element of the deportable conduct, any more than is the birth of an accused an element of the crime with which he is charged" (R. 34-35).

"After entry" in the context of "any time after entry" seems clearly designed to distinguish acts occurring in the United States from acts occurring before the alien has physically come into the United States. But there is no reason to believe that it is within the intent of the statute that, where an alien has been physically present in the United States for a substantial period of time and while here has committed acts, such as two crimes involving moral turpitude, which Congress has deemed serious enough to warrant deportation "at any time", he should obtain immunity from deportation merely because he was not an alien when he first came to the United States. Petitioner is an alien who while in the United States has been twice convicted of crimes involving moral turpitude. As such, we submit, he is clearly of the class of aliens deportable under Section 19 of the Act of 1917.

As pointed out in the petition for certiorari in the *Mangaoang* case, the Court of Appeals for the Ninth Circuit had in earlier decisions construed the words "after entry" in the context of "at any time after entry" to mean "while such alien is in the United States." *United States* v. *Yamamoto,* 240 Fed. 390, 391. *United States* v. *Sui Joy,* 240 Fed. 392, 393. The court's reasoning and conclusions in these earlier cases is, we submit, more consonant with the purpose of the expulsion statute than is the instant decision.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be granted.

ROBERT L. STERN,
Acting Solicitor General.

OCTOBER, 1953.

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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 431

BRUCE G. BARBER, DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE, SAN FRANCISCO, CALIFORNIA, PETITIONER

v.

PEDRO GONZALES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The majority and dissenting opinions below (R. 25–35) are reported at 207 F. 2d 398.

JURISDICTION

The judgment of the Court of Appeals was entered on September 15, 1953 (R. 36). The petition for a writ of certiorari was filed on October 23, 1953, and was granted on December 14, 1953 (R. 38). The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether a Filipino who entered the United States prior to the enactment of the Philippine Independence Act of 1934, but who was twice convicted of crimes involving moral turpitude committed after enactment of that statute, may be deported under Section 19 of the Immigration Act of 1917 as an alien who has committed such crimes after entry into the United States.

STATUTES INVOLVED

Section 19 (a) of the Immigration Act of February 5, 1917, 39 Stat. 889, as amended, formerly 8 U. S. C. 155 (a), provides in pertinent part:

> * * * except as hereinafter provided, any alien who is hereafter sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States, or who is hereafter sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving moral turpitude, committed at any time after entry * * * shall, upon the warrant of the Attorney General, be taken into custody and deported * * *.

The Act of March 24, 1934, known as the "Philippine Independence Act", 48 Stat. 456, c. 84, formerly 48 U. S. C. 1232 *et seq.*, provided in pertinent part:

SEC. 8. (a) Effective upon the acceptance of this Act by concurrent resolution of the Philippine Legislature or by a convention called for that purpose, as provided in section 17—

(1) For the purposes of the Immigration Act of 1917, the Immigration Act of 1924 (except section 13 (c)), this section, and all other laws of the United States relating to the immigration, exclusion, or expulsion of aliens, citizens of the Philippine Islands who are not citizens of the United States shall be considered as if they were aliens. For such purposes the Philippine Islands shall be considered as a separate country and shall have for each fiscal year a quota of fifty.

* * * * *

SEC. 14. Upon the final and complete withdrawal of American sovereignty over the Philippine Islands the immigration laws of the United States (including all the provisions thereof relating to persons ineligible to citizenship) shall apply to persons who were born in the Philippine Islands to the same extent as in the case of other foreign countries.

STATEMENT

Respondent, a native of the Philippine Islands, entered the United States in 1930 at the age of seventeen (R. 9, 14). In 1941, he was convicted in the Superior Court of the State of California of the crime of assault with a deadly weapon and

was sentenced to imprisonment for one year (R. 9, 15). In 1950, he was convicted of second degree burglary in the State of Washington and was sentenced under the indeterminate sentence law of that state for a term, the minimum of which was to be set by the Parole Board, and the maximum of which was fifteen years. He served two years for said offense (R. 10, 15).

In July, 1951, after a hearing, respondent was ordered deported under Section 19 of the Immigration Act of 1917 (*supra,* p. 2) as an alien who after entry had been sentenced more than once to imprisonment for terms of one year or more for crimes involving moral turpitude (R. 10, 14, 15). After he was taken into custody for deportation, he filed a petition for a writ of habeas corpus, subsequently amended (R. 8–13), in which he claimed to be a national of the United States and also attacked the validity of the deportation order on the grounds that (1) the crime of which he was convicted in California was not one involving moral turpitude, and (2) he was not within the intent of Section 19 of the Immigration Act of 1917 since he was a national of the United States at the time the California crime was committed. The district court dismissed the petition (R. 18).[1]

On appeal, the Court of Appeals for the Ninth Circuit reversed the order of the district court

[1] A previous petition for habeas corpus brought in the United States District Court for the Western District of Washington had also been dismissed (R. 11, 15).

(R. 36), Judge Bone dissenting (R. 29–35). The court rejected three of petitioner's contentions—(1) that the crime of assault with a deadly weapon was not a crim involving moral turpitude; (2) that petitioner remained a national of the United States after Philippine independence in 1946; (3) that Section 19 was inapplicable to his case because he was a national of the United States when the first offense was committed (R. 25–27). A majority of the court below held, however, that petitioner was not deportable under Section 19 of the Immigration Act of 1917 because, having entered in 1930 as a national of the United States, he had made no "entry" within the terms of that section providing for deportation of aliens convicted of two crimes involving moral turpitude "committed at any time after entry" (R. 27–29). This holding is in accord with the same court's previous ruling that a Filipino who came to the United States before the Independence Act of 1934 had not entered the United States and was therefore not deportable under Section 22 of the Internal Security Act of 1950, a ruling which was one of alternative grounds of the court's decision in *Mangaoang* v. *Boyd*, 205 F. 2d 553, petition for certiorari No. 345, this Term, denied November 9, 1953.

SUMMARY OF ARGUMENT

A. Although the Philippine Independence Act of 1934 provides that citizens of the Philippine

Islands shall be considered as aliens for the purpose of deportation, the court below has held that a citizen of the Philippine Islands who came to the United States prior to 1934, and who was convicted of crimes involving moral turpitude committed after 1934, did not make an "entry" into the United States so as to permit his deportation under Section 19 (a) of the Immigration Act of 1917 as an alien who has been convicted of more than one such crime "committed at any time after entry". In thus holding that the respondent did not make an "entry" because he was not an alien when he came into the United States, the court below admittedly has narrowed the usual meaning of "entry". As this Court has remarked, "the words of statutes * * * should be interpreted where possible in their ordinary, everyday senses". *Crane* v. *Commissioner of Internal Revenue,* 331 U. S. 1, 6. Nothing in the language or purpose of Section 19 (a) of the 1917 Act in any way justifies a departure from the common meaning of "entry" as a coming into the United States. Rather, the history of Section 19 (a) discloses unmistakably the purpose of Congress to rid the country of aliens who are "criminal[s] at heart," irrespective of their status on coming to this country. See *Fong Haw Tan* v. *Phelan,* 333 U. S. 6, 9. The clause of Section 19 (a) here involved originated as an amendment to a provision authorizing deportation of alien criminals only within

five years after entry. Nothing could be plainer than that an expansion of the class of deportable alien criminals was intended, and that this intention would be frustrated by nice distinctions among such alien criminals based on their status at the time of entering the United States.

Moreover, the 1917 Act was preceded by another Act of Congress which also made specified conduct grounds for deportation at any time after entry into the United States. That act, the Act of March 26, 1910 (36 Stat. 263) made an alien who engaged in prostitution "after such alien shall have entered the United States" deportable without limit as to time. In two decisions by the Court of Appeals for the Ninth Circuit, it was held that persons who had entered Hawaii before the transfer of its sovereignty to the United States, and so had never come into United States territory as aliens, nevertheless came within the terms of the statute. *United States* v. *Yamamoto,* 240 Fed. 390; *United States* v. *Sui Joy,* 240 Fed. 392. In answering the objection that technically the alien had never entered the United States, the court in the *Yamamoto* case observed: "The consideration which induced the amendment was that the objectionable aliens were in the United States, not the manner in which they got there." This conclusion is equally applicable to Section 19 (a).

B. The restrictive meaning given to "entry" by the court below largely nullifies Section 8 (a) of

the Philippine Independence Act of 1934 (48 Stat. 462), which in terms made citizens of the Philippine Islands subject to laws of the United States relating, *inter alia,* to expulsion. If, in order to come within Section 19 (a), it is essential that alienage and entry coincide, the effect is to exempt from expulsion, no matter what crimes they may commit, those Filipinos who resided here at the time the 1934 Act was passed. Since Section 8 (a) also limited new Filipino immigration to 50 per year, and since there were then 45,000 Filipinos in the United States, the effect of the decision below is to give to most Filipinos residing in this country an extensive immunity from deportation. Nothing in the 1934 Act or its history suggests that Congress intended an exemption of such magnitude as to largely negate its command that the expulsion laws should apply to citizens of the Philippine Islands. On the other hand, the Immigration Service, in a contemporaneous administrative regulation promulgated pursuant to Section 8 (a), declared that then-resident Filipinos would thenceforth be deportable like aliens, with the single pertinent exception that they should not be deported on the basis of acts occurring or conditions existing before the effective date of the Act. 8 C. F. R. (1939) § 30.9. Moreover, it is significant that since enactment of the Philippine Independence Act, Congress had used the term enter or "entry" in referring to the coming of Filipinos prior to

May 1, 1934 (the effective date of the Philippine Independence Act). Section 326 of the Immigration and Nationality Act of 1952, 66 Stat. 163, 248 (8 U. S. C. A. 1437); and the Act of July 2, 1946, 60 Stat. 416, 417.

C. The authorities relied on below do not support the proposition that "entry" has "become a word of art." The cases relied on by the Court of Appeals, far from narrowly and technically defining "entry," held that it "should have its ordinary meaning" (*United States ex rel. Volpe* v. *Smith,* 289 U. S. 422, 425), with the result that "entry" was found to encompass original and all subsequent comings into the United States. *United States ex rel. Volpe* v. *Smith, supra, United States ex rel. Schlimmgen* v. *Jordan,* 164 F. 2d 633, 637 (C. A. 7). Two of the cases cited held that there is no "entry" when aliens return to the United States from foreign places where they had arrived due to circumstances beyond their control (*Delgadillo* v. *Carmichael,* 332 U. S. 388; *Di Pasquale* v. *Karnuth,* 158 F. 2d 878 (C. A. 2)), but such decisions are not relevant to the issue raised here. Since the persons involved in those cases were, in fact, aliens at the time of entry, the language of the courts in those cases has no bearing on the present question.

The lower court also sought support in the definition of "entry" in Section 101 (a) (13) of the Immigration and Nationality Act of 1952 (8 U. S. C. A. 1101 (a) (13)) as meaning "any coming of an

alien into the United States, from a foreign port or place or from an outlying possession." However, Congress made it clear that this definition of "entry" does not exclude the arrival in the United States of one who has since acquired alien status, for Section 326 of the same statute refers to the coming of Filipinos to the United States prior to the Philippine Independence Act as an "entry" (8 U. S. C. A. 1437).

ARGUMENT

THE COURT OF APPEALS ERRED IN HOLDING THAT "ENTRY," AS USED IN SECTION 19 (a) OF THE IMMIGRATION ACT OF 1917, MEANT ONLY THE COMING OF A PERSON, WHILE HE IS AN ALIEN, INTO THE UNITED STATES

The validity of the decision below turns entirely on the proper meaning of the word "entry" as used in Section 19 (a) of the Immigration Act of 1917, *supra*. The pertinent clause of that statute calls for the deportation of aliens who have more than once been convicted and sentenced to imprisonment for crimes involving moral turpitude "committed at any time after entry."[2] The Court of Appeals, one judge dissenting, held that as there used "entry" does not have "its plain and obvious meaning," but "has become a word of art," now meaning only the coming of a person into the United States at a time when he is an

[2] Respondent was convicted of assault with a deadly weapon and second-degree burglary, both of which the Court of Appeals held to involve the requisite moral turpitude (R. 26).

alien (R. 28). The court held, accordingly, that respondent, who came to the United States in 1930 as a citizen of the Philippines and a national of the United States—hence not as an alien—had not made an "entry" within the technical meaning of that word.[3] The practical result of the decision below is that respondent cannot be deported although he was an alien both when he committed the crimes constituting the ground for deportation and when the deportation proceedings were instituted. The sole issue now raised is whether there is any basis for that narrow and technical reading of "entry." We submit that there is not.

A. THE CONTEXT AND HISTORY OF THE TERM "ENTRY" AS USED IN SECTION 19 (a) SHOW THAT IT HAS THE ORDINARY MEANING OF A COMING INTO THE UNITED STATES

1. *Words of a statute should be given their ordinary meaning unless a different intent is clearly shown.*—The court below recognized that the meaning which it ascribed to the word "entry" is not its "plain and obvious" meaning (R. 28).[4] Respondent came into the United States at San

[3] The court below did not question that for purposes of Section 19 (a) respondent could be treated as an alien from the effective date of the Philippine Independence Act (48 Stat. 456, 462). Both convictions occurred after the effective date of that Act (May 1, 1934), and the court makes it plain that had he made an "entry" he could have been deported (R. 26–27).

[4] In *Webster's New International Dictionary* (2d ed.), "enter" is defined as: 1. To go or come in, to a place or condition * * *.

Francisco in 1930, and, in the usual sense of the word, he then made an "entry" into the United States. This Court has noted that "the words of statutes * * * should be interpreted where possible in their ordinary, everyday senses." *Crane* v. *Comm'r of Internal Revenue,* 331 U. S. 1, 6; see *Addison* v. *Holly Hill Co.,* 322 U. S. 607, 618. This canon of construction favoring the ordinary meanings of common words is not vitiated by that favoring strict construction "because deportation is a drastic measure * * *." *Fong Haw Tan* v. *Phelan,* 333 U. S. 6, 10,[5] quoted by the court below (R. 29). As was said by this Court in *United States* v. *Brown,* 333 U. S. 18, 25–26:

> The canon in favor of strict construction is not an inexorable command to override common sense and evident statutory purpose. It does not require magnified emphasis upon a single ambiguous word in order to give it a meaning contradictory to the fair import of the whole remaining language. As was said in *United States* v.

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[5] This Court in the *Fong Haw Tan* case construed the provision of Section 19 (a) involved here as applying only to one who after having served a term of imprisonment for a crime involving moral turpitude again is convicted and sentenced to imprisonment for such an offense. The provision was held not to apply to one who on the same occasion was convicted of two separate offenses in two counts of a single indictment. This construction, while "strict," carries out the intent of Congress as disclosed by the language and legislative history of the statute. That is not true of the "strict construction" adopted by the court below in this case.

> *Gaskin,* 320 U. S. 527, 530, the canon "does not require distortion or nullification of the evident meaning and purpose of the legislation." Nor does it demand that a statute be given the "narrowest meaning"; it is satisfied if the words are given their fair meaning in accord with the manifest intent of the lawmakers.

Thus, the court below was under no compulsion to read into the word "entry" a requirement that a person must be an alien at the time when he came into the United States. This circumstance is not a normal ingredient of an "entry". Nothing in the language of Section 19 (a) suggests that an alien who is now physically present in the United States cannot be regarded as having entered the United States unless he was an alien when he came here, or that Congress was concerned with his status prior to the time when, as an alien, he became subject to deportation. *Eichenlaub* v. *Shaughnessy,* 338 U. S. 521, 531–532. The clear purpose of Congress as disclosed by the history of Section 19 (a), Congressional usage in other statutes, and prior judicial definition of the word in this context compel a contrary conclusion.

2. *The clear purpose of Section 19 (a) is to require the deportation of a particular class of undesirable aliens who have come into the United States regardless of their status at the time they arrived.*—The legislative history of Section 19 (a)

does not specifically refer to the deportability of Filipinos under that section, since at the time of its enactment they were not subject to deportation. However, that history makes clear the Congressional purpose to remove from the United States *all* aliens whose repeated criminal conduct made their continued presence undesirable. That purpose would, of course, be frustrated by a narrow definition of "entry" under which aliens who had engaged repeatedly in criminal conduct would be permitted to remain in the United States merely because at the time of their entry into the United States they had not been aliens.

The manner in which the clause of Section 19 (a) under which respondent was ordered deported entered the 1917 Act was described by the Senate Committee on Immigration in its report accompanying the bill as passed by the House as follows (S. Rep. 352, 64th Cong., 1st Sess., p. 15):

> When the act was passed as H. R. 6060 it contained a new provision * * * for the deportation of aliens who commit serious crimes within five years after entry * * *. As the act now stands the House has added, at the suggestion of its committee * * *, *a provision intended to reach the alien who after entry shows himself to be a criminal of the confirmed type, such aliens to be deported without limitation on the length of time after entry when they commit*

a second serious offense. * * * [Emphasis supplied.]

The debate in the House when the provision referred to in the Senate Report was introduced and adopted emphasizes that Congress was concerned with the problem of alien criminals and did not make nice distinctions between classes of aliens based upon their status at the time they entered the United States. Representative Sabath introduced it as an amendment to a provision calling for the deportation of aliens who within five years after entry committed one crime involving moral turpitude. In explaining the amendment, Representative Sabath declared (53 Cong. Rec. 5167):

> My amendment provides that after a second offense committed by such an alien, or where he has been for the second time convicted, the five-year limitation should not apply. In other words, even though he may have been residing in the United States for five years or more, if he is for the second time convicted of any offense or crime involving moral turpitude, he should be deported. The provisions in this act covering the majority of cases place the limitation at five years.
>
> A little later on, after the adoption of this amendment, I am going to move to reduce the term from five years to three years, but I am offering this amendment to demonstrate *that I have no desire to protect a real criminal, a man who is a*

> *criminal at heart, a man who is guilty of a second offense involving moral turpitude and for the second time is convicted. A man of that kind is a criminal and is not entitled to consideration on the part of any of the citizens of the United States.* [Emphasis supplied.]

Representative Burnett, who was in charge of the bill on the floor, described the testimony which had induced the committee to submit the amendment (53 Cong. Rec. 5168):

> The police commissioner of New York was before the committee, and he showed an alarming condition in the prisons in regard to aliens who commit crimes after they come here, and he insisted that there should be no time limit as to the deportation of any of them this side of final citizenship.

This suggestion was rejected, but the committee unanimously accepted the Sabath proposal as a suitable compromise. The committee's view, according to Mr. Burnett, was that "on the commission of the second offense, showing that the man was really a criminal at heart, we believed that he ought to be deported." (*ibid.*). The only opposition to the amendment came from Representative Bennet, who thought that one conviction of a serious crime ought to be sufficient to warrant deportation, and was unable to understand "the tenderness of this House toward aliens who commit crimes." (*ibid.*).

The legislative history shows that it was the purpose of Congress to expel from this country aliens who showed themselves to be "criminal[s] at heart" by committing two offenses of the specified type *"at any time* after entry." See *Fong Haw Tan* v. *Phelan, supra,* at p. 9. Such persons, as the House Committee learned from the New York Police Commissioner, were a menace to law and order, and the five year limitation was removed as to such alien criminals in order to meet this menace. It is unreasonable to suppose that Congress, while on the one hand thus expanding the class of deportable alien criminals, sought, at the same time, by the use of a narrow concept of "entry", to restrict that class by shielding from deportation those alien criminals who are actually in the United States but were not aliens at the time of entry. Such persons are no less a threat to the peace and order of the community, and their continued residence is no less at the sufferance of the United States. As the dissenting judge points out: "In such case the 'entry' is not, in any real sense, an element of the deportable conduct, any more than is the birth of an accused an element of the crime with which he is charged" (R. 34–35). Compare *Del Guercio* v. *Gabot,* 161 F. 2d 559 (C. A. 9).

In addition, since as we have indicated (*supra,* pp. 11–12), common words where possible are to be given their usual meanings, it would appear to be essential to the construction below that the histori-

cal use of the word "entry" should at least suggest that Congress uses that term in a narrow and highly special sense. There is no evidence of such a technical usage.

Thus, the 1917 Act was not the first act of Congress to make specified conduct grounds for deportation at any time after entry. Representative Sabath, in the debates on Section 19 (a) discussed above, mentioned as a precedent for his amendment a previously enacted provision which required the deportation of aliens connected with prostitution without limit as to time. (53 Cong. Rec. 5168). That provision was contained in the Act of March 26, 1910 (36 Stat. 263), amending Section 3 of the Act of F ruary 20, 1907 (34 Stat. 898) which had placed a three year limitation on the deportation of aliens engaged in prostitution. The 1910 statute read in pertinent part as follows:

> Any alien who shall be found an inmate of or connected with the management of a house of prostitution or practicing prostitution *after such alien shall have entered the United States,* * * * shall be deemed to be unlawfully within the United States and shall be deported in the manner provided by sections twenty and twenty-one of this Act. [Emphasis supplied.][6]

Although the opinion below ignores them, there are decisions from the Ninth Circuit, decided, by

[6] This provision was incorporated without substantial alteration into Section 19 (a) of the Immigration Act of 1917.

coincidence, on the same day that the 1917 Act was passed, which fully disposed of the contention that the phrase "after such alien shall have entered the United States" should be construed to mean that the alien must have been an alien at the time he came into this country as well as when he committed the acts constituting grounds for deportation. *United States* v. *Yamamoto,* 240 Fed. 390 (C. A. 9); *United States* v. *Sui Joy,* 240 Fed. 392 (C. A. 9). Both cases involved aliens who were residents of Hawaii before the transfer of its sovereignty to the United States, so that, as here, there had been no "entry," as the court below defines that term, into the United States by an alien. The applicability of the 1910 statute to those aliens was the sole question considered by the court in the *Yamamoto* case, *supra,* and the court disposed of the question as follows (240 Fed. at 391):

> The definition of the charge under which the appellee is held for deportation is limited by the words "after such alien shall have entered the United States." It is true that she has never technically entered the United States. While the territory of Hawaii may in a sense be said to have entered the United States by its annexation on August 12, 1898, it does not follow that its inhabitants thereby became immigrants to the United States. In ascertaining the intention of Congress in making the amendment of 1910, an important fact is that the

> amendment was made by striking certain words from the former act, whereby the time limitation in the former act was repealed. We think that Congress intended by the amendment to say that any alien found in the United States practicing prostitution shall be sent out of the country, and that such exclusion shall apply to all alien women, whether they came into the United States at a port of entry, or by the annexation of the land in which they lived * * * and that the words "after such alien shall have entered the United States" should be construed as if they read "while such alien is in the United States." It should be assumed that Congress intended to make no discrimination between these classes of aliens. *The consideration which induced the amendment was that the objectionable aliens were in the United States, not the manner in which they got here.* [Emphasis supplied.]

In the *Sui Joy* case, *supra,* the court indorsed this construction,[7] and added that its validity was unaffected by an administrative regulation requiring that the warrant of arrest for deportation be accompanied by a certificate of landing. Observance of this rule, the court noted (240 Fed. at 394)—

[7] It should be noted that the statutory question in these cases was, if anything, more difficult than that now raised, for literally the aliens involved had never "entered [come into] the United States," while, admittedly, respondent did come into this country.

> "may be essential in all those deportation cases in which the proceedings must be begun within a fixed period after the alien has entered the United States, * * *. But it does not follow from the promulgation of that rule that the officers of the department have construed the provisions of section 3 as amended in 1910, as applicable only to aliens who have entered at a port of the United States, and that in deporting such aliens the fact of entry must be shown.

See also *Tama Miyake* v. *United States,* 257 Fed. 732, 733 (C. A. 9). These decisions, the only cases to have construed "entry" in a statute of the type involved here, if not dispositive of the present case, at least establish that in 1917 "entry" had not become a "word of art" with the technical and limited meaning ascribed to it by the court below. There is thus no reason at this late date to give it a restricted meaning which does not comport with the obvious purpose of the statute.

B. "ENTRY" AS A TERM OF ART MEANING ONLY "ENTRY AS AN ALIEN" UNDULY LIMITS SECTION 8 (A) OF THE PHILIPPINE INDEPENDENCE ACT OF 1934, AND IS CONTRARY TO CONSISTENT CONGRESSIONAL USAGE IN OTHER STATUTES REFERRING TO FILIPINOS WHO CAME TO THE UNITED STATES PRIOR TO THAT ACT

The restrictive effect of narrowly defining "entry", is not limited to Section 19 (a) of the Immigration Act of 1917. If "entry" does not embrace the coming of a Filipino to the United States prior to May 1, 1934, the operation of Section 8 (a) (1) of the Philippine Independence

Act (48 Stat. 462) is severely curtailed. That section provided:

> (1) For the purposes of the Immigration Act of 1917, the Immigration Act of 1924 (except Section 13 (c)), this section, and all other laws of the United States relating to the immigration, exclusion, or *expulsion* of aliens, *citizens of the Philippine Islands who are not citizens of the United States shall be considered as if they were aliens.* For such purposes the Philippine Islands shall be considered as a separate country and shall have each fiscal year a quota of fifty. * * * [Emphasis supplied.]

The plain language of this section states that Philippine citizens shall be treated as aliens for purposes of the immigration laws, including expulsion. Nothing in the statute, and nothing in the extensive history of its enactment, indicates that it was not meant to apply to Philippine citizens who then resided in the United States, but who previously had entered this country.[8] However, unless such resident Filipinos can be said to have made an "entry" into the United States, they would be effectively eliminated from the operation of Section 8 (a), since virtually all of the grounds for expulsion contained in Section 19 (a) of the Immigration Act depend upon con-

[8] Cf. *Cabebe* v. *Acheson*, 183 F. 2d 795 (C. A. 9); *Barber* v. *Varleta*, 199 F. 2d 419 (C. A. 9).

duct "prior to" or "after entry."[9] Thus, it follows from the decision below that only Filipinos who entered the United States (or re-entered) after the effective date of the Philippine Independence Act would come within the purview of Section 8 (a).

It is not likely that Congress would have assimilated "citizens of the Philippine Islands" to the status of aliens while intending to exclude from important incidents of alienage the large number of Philippine citizens who then resided in the United States. This is especially true in view of the fact that Congress, knowing that as of 1930 there were over 45,000 Filipinos in the United States (S. Rep. 494, 73d Cong., 2d Sess., pp. 12–13), limited future Filipino immigration to 50 per year. The construction of the court below results in Section 8 (a) being applicable during the expected ten year life of the statute to only 500[10] of the more than 45,000 persons coming within its literal terms. Nothing in the 1934 Act or its history even suggests an exception of such magnitude.

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[9] The only expulsion provision that does not specifically refer to conduct "after entry" or "prior to entry" is that relating to aliens whose entry was itself unlawful (8 U. S. C. 155 (a)).

[10] Plus, of course, resident Filipinos who departed and later returned.

On the other hand, there is a contemporaneous administrative construction that unmistakably implies that no such exception was contemplated. The administrative regulation promulgated by the Immigration Service on June 8, 1934, pursuant to Section 8 (a) of the act provided in pertinent part (8 C. F. R. (1939) § 30.9):

> All citizens of the Philippine Islands shall be subject to deportation, and may be deported in the same manner as aliens, with the following exceptions:
>
> (a) A citizen of the Philippine Islands who has resided in the United States continuously since April 30, 1934, shall not be subject to deportation for any act of his that occurred, or mental or physical disease, disability, or defect that existed prior to May 1, 1934.

This clearly implies that Filipinos whose residence in the United States commenced on or before April 30, 1934, could be deported on the basis of criminal acts occurring subsequent to May 1, 1934, and the Board of Immigration Appeals so held repeatedly. 3 I. & N. Dec. 155, 184, 396. The above exception to the broad import of the regulation that "all citizens of the Philippine Islands shall be subject to deportation, etc." manifestly does not reach the present type of case. A contemporaneous administrative construction that in the twelve year existence of the

Act[11] was never repudiated by Congress is entitled to great weight. See, e. g., *Fleming* v. *Mohawk Co.,* 331 U. S. 111, 116, and cases cited. This construction, however, must be brushed aside if the definition of "entry" by the Court below is sustained.

Moreover, it is significant that, since the enactment of the Philippine Independence Act, Congress has used the terms "enter" or "entry" as applying to the coming of a Filipino to the United States prior to May 1, 1934. Thus, in 1946 Congress provided that for purposes of naturalization, certificates of arrival or declarations of intentions should not be required of Filipinos "who *entered* the United States prior to May 1, 1934, and have since continuously resided in the United States." Act of July 2, 1946, 60 Stat. 416, 417. Similarly Section 326 of the Immigration and Nationality Act of 1952 reads as follows (8 U. S. C. A. 1437):

> Any person who (1) was a citizen of the Commonwealth of the Philippines on July 2, 1946, (2) *entered* the United States prior

[11] While Section 8 (a) of the Philippine Independence Act became ineffective with the proclamation of independence in 1946 (Proc. No. 2695, July 4, 1946, 60 Stat. 1352), Section 14 of the same Act (48 Stat. 464, 48 U. S. C. 1244) thereupon became effective to require that the immigration laws be applied to persons born in the Philippine Islands as in the case of other aliens.

> to *May 1, 1934,* and (3) has, since *such entry,* resided continuously in the United States shall be regarded as having been lawfully admitted to the United States for permanent residence for the purpose of petitioning for naturalization under this title. [Emphasis supplied.]

Thus "enter" was used in its ordinary sense not only in 1917, before the present problem could have been anticipated by Congress, but subsequently, after the Philippines had become independent. Only the ordinary meaning of "entry" comports with the clear purposes of the 1917 Act and Section 8 (a) of the Philippine Independence Act, as well as with subsequent Congressional action with respect to Filipinos who came to this country prior to 1934.

C. NEITHER THE DECISIONS OF THIS COURT NOR THE DEFINITION OF "ENTRY" IN THE 1952 ACT SUPPORT THE DECISION BELOW

The construction of the term "entry" by the court below, which, as we have shown, is contrary to the "ordinary, everyday" meaning of the word, the legislative purpose, prior judicial construction, and later Congressional usage, rests upon two supposed bases: (1) a group of cases in which courts, at least in the view of the court below, have defined "entry" technically as the coming of an alien into the United States; and second, the definition of "entry" set out in § 101 (a) (13) of the Immigration and Nationality Act of 1952, 8 U. S. C. A. 1101 (a) (13).

1. *Read in context, the cases relied on below do not support a narrow, technical definition of "entry".*—The opinion below lists four cases in which a concept of entry as the coming of an alien from a foreign country into the United States was applied. The language first appeared in *United States ex rel. Volpe* v. *Smith,* 289 U. S. 422, 425, and was repeated in *Delgadillo* v. *Carmichael,* 332 U. S. 388, 390; *Di Pasquale* v. *Karnuth,* 158 F. 2d 878 (C. A. 2); *United States ex rel. Schlimmgen* v. *Jordan,* 164 F. 2d 633, 637 (C. A. 7). However, the opinion in *Volpe* v. *Smith, supra,* makes clear on several counts that this Court had no intention whatever of defining "entry" so as in the future to preclude from its coverage the coming into the United States of a nonalien.[12]

In part, this is made clear by the context in which the language appears. At the place cited by the court below, this Court declared (289 U. S. at 425):

> We accept the view that the word "entry" * * * *includes any* coming of an alien from a foreign country into the United

[12] The majority opinion in this case stated in this connection (R. 28):

> "While it is true that the ultimate holdings * * * were that the coming of an alien into the United States for the second time was an 'entry', we do not rely upon the holding of these cases but merely cite them as showing the narrow meaning which has been ascribed to the word."

> States *whether such coming be the first or any subsequent one.* [Emphasis supplied.]

The italicized words above make clear that the Court's purpose was to *broaden* the term "entry" so as to include other than original entries. That the Court spoke of the "coming of an alien" must be regarded as purely fortuitous; Volpe, of course, was an alien at the time of his original and later entries, and the circumstances presented in the instant case plainly were not contemplated by the Court.

It is clear, moreover, that this Court there chose to employ a broad, nontechnical definition of "entry" rather than the restricted one then being urged upon it. The Court explained in language equally pertinent to the present issue its principal reason for selecting the broader meaning. The Court remarked (*ibid.*):

> An examination of the Immigration Act of 1917, we think, reveals nothing sufficient to indicate that Congress did not intend the word "entry" in § 19 *should have its ordinary meaning.* [Emphasis supplied.]

We think it equally apparent that the other decisions cited below, dealing with persons who had at all times been aliens, in no way hold that under Section 19 (a) of the Immigration Act of 1917 it was essential that alienage and entry coincide. The question simply was not before the courts. The *DiPasquale* and *Delgadillo* cases, *supra,* stand on no different footing merely because in those

cases it was held that there had been no entry within the contemplation of the statute. These cases merely qualify the broad sweep of *United States ex rel. Claussen* v. *Day*, 279 U. S. 398, and of *Volpe* v. *Smith, supra,* by limiting "entry" to a return to the United States following a knowing or voluntary departure from the United States to a foreign place.[13] Thus, the cases relied on below are wholly inapposite to the present issue, except to the extent that they hold that entry "should have its ordinary meaning." See *Volpe* v. *Smith, supra.*

2. *The definition of "entry" in the Immigration and Nationality Act of 1952 would not preclude its application to the coming of Filipinos to the United States prior to the 1934 Act.*—The majority opinion below seeks support for its position in the definition of "entry" adopted in Section 101 (a) (13) of the Immigration and Nationality Act of 1952 (8 U. S. C. A. 1101 (a) (13)). That subsection reads as follows:

> The term "entry" means any coming of an alien into the United States, from a foreign port or place or from an outlying

[13] In *DiPasquale*, it was held that there had been no new entry into the United States by an alien who, while riding a train between two points within the United States, passed through Canada en route, the route of the train being unknown to him. In *Delgadillo*, the alien's return to the United States from Cuba was held not to be a new entry since he had been put ashore at Havana after a ship on which he was serving as a seaman had been torpedoed.

> possession, whether voluntarily or otherwise, except that an alien having a lawful permanent residence in the United States shall not be regarded as making an entry into the United States for the purposes of the immigration laws if the alien proves to the satisfaction of the Attorney General that his departure to a foreign port or place or to an outlying possession was not intended or reasonably to be expected by him or his presence in a foreign port or place or in an outlying possession was not voluntary * * *.

This definition plainly reflects nothing but the propositions established earlier by the cases referred to above, and by other cases,[14] that reentries as well as original entries are encompassed by the term "entry"—with the limitation that the preceding departure to a foreign place must have been intentional and voluntary. Again, the phrase "coming of an alien" reflects nothing more than the inevitable preoccupation of the immigration laws with persons who were aliens when they came into the United States.

Furthermore, as we have seen, in Section 326 of the 1952 Act Congress used "entry" in referring to the coming of Filipinos to the United

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[14] *Lapina* v. *Williams*, 232 U. S. 78; *United States ex rel. Claussen* v. *Day*, 279 U. S. 398; *Schoeps* v. *Carmichael*, 177 F. 2d 391 (C. A. 9); *United States ex rel. Doukas* v. *Wiley*, 160 F. 2d 92 (C. A. 7); *Del Castillo* v. *Carr*, 100 F. 2d 338 (C. A. 9); *Jackson* v. *Zurbrick*, 59 F. 2d 937 (C. A. 6).

States prior to May 1, 1934 (*supra*, pp. 25–26). It is unreasonable to suppose that Congress defined the term "entry" in Section 101, and in Section 326 of the same act used it in a different sense. The latter section would be rendered meaningless were the lower court's construction to stand, a result wholly inconsistent with the long-established rule of construction that "repugnency should, if practicable, be avoided * * *." *Lamp Chimney Co.* v. *Ansonia Brass & Copper Co.*, 91 U. S. 656, 663; see *United States* v. *Moore*, 95 U. S. 760, 763. The inconsistency is readily resolved if "entry" is taken to mean any coming (original or subsequent) by one who either is or later becomes an alien, subject to the limitation that the departure preceding a reentry was intended and voluntary.

CONCLUSION

We conclude that: (1) there is no judicial authority sustaining the lower court's restrictive definition of entry; (2) legislative usage does not conform to such a definition of entry; and (3) so defining "entry" limits and distorts the scope and meaning of the relevant provisions of the Immigration Act of 1917 and the Philippine Independence Act in a way wholly unwarranted by their plain language, purpose, and (in the case of the Philippine Independence Act) contemporaneous administrative interpretation. We, therefore,

respectfully submit that the decision below should be reversed.

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CITATIONS

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Miscellaneous:

In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 431

BRUCE G. BARBER, DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE, SAN FRANCISCO, CALIFORNIA, PETITIONER

v.

PEDRO GONZALES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF FOR THE PETITIONER

The respondent in his brief contends that in the Philippine Independence Act of 1934 Congress did not, and under the Constitution could not, apply the deportation statutes to citizens of the Philippine Islands then residing in the United States (Resp. br. 20–26). That is, respondent not only contends, as the court below held (R. 28–29), that since he was a noncitizen national of the United States when he came from the Philippine Islands to the United States in 1930, he did not make an "entry" into the United States within the meaning

of Section 19 (a) of the Immigration Act of 1917, but also, contrary to the court below (R. 26–27), that notwithstanding the provisions of the Philippine Independence Act he has continued to be and still is a national of the United States and, as such, is not subject to deportation. We submit that the history of the relationship of the Philippine Islands and its inhabitants to the United States, together with the constitutional principles which this Court has derived from that relationship, completely dispose of respondent's contentions as to what Congress could and did do.

I

BOTH THE HISTORICAL RELATIONSHIP BETWEEN THE PHILIPPINE ISLANDS AND THE UNITED STATES AND THE DECISIONS OF THIS COURT MAKE CLEAR THAT THE STATUS OF CITIZENS OF THE PHILIPPINE ISLANDS AS NATIONALS OF THE UNITED STATES HAS BEEN SUBJECT TO MODIFICATION OR TERMINATION AT ANY TIME BY THE CONGRESS

The historical relationship of the Philippine Islands to the United States. Following the war with Spain, the Philippine Islands were ceded to the United States by the Treaty of Paris of December 10, 1898 (30 Stat. 1754), which provided in Article IX that "the civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress." As this Court noted in *Balzac* v. *Porto Rico,* 258 U. S. 298, 306, "Few questions have been the subject of such discussion

and dispute in our country as the status of our territory acquired from Spain in 1899." By the Act of July 1, 1902 (32 Stat. 691, 692), Congress declared that all inhabitants of the Philippine Islands continuing to reside there who were Spanish subjects on April 11, 1899, and their children subsequently born, shall "be citizens of the Philippine Islands and as such entitled to the protection of the United States * * *."[1] Later, in 1916, in Section 2 of the Jones Act (39 Stat. 545, 546), this provision of the 1902 Act governing the political status of the inhabitants of the Philippine Islands was repeated. The Act of April 12, 1900, 31 Stat. 77, 79, made a similar provision for the inhabitants of Puerto Rico. However, in contrast with the Act of March 2, 1917, 39 Stat. 951, 953, which declared the inhabitants of Puerto Rico to be citizens of the United States, no act of Congress has ever declared the citizens or inhabitants of the Philippine Islands to be citizens of the United States.[2]

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[1] Except for those who elected to maintain their allegiance to Spain.

[2] The withholding of American citizenship from Filipinos is unique in our history. In every other case where new territory was ceded to the United States, provision was made for the eventual admission of the inhabitants thereof to United States citizenship. In the opinion for the Court in *Downes* v. *Bidwell*, 182 U. S. 244, 280, Mr. Justice Brown observed:

> In all its treaties hitherto the treaty-making power has made special provision for this subject; in the cases of Louisiana and Florida, by stipulating that "the inhab-

By the series of steps summarized in *Hooven & Allison Co.* v. *Evatt*, 324 U. S. 652, 674–676, the subsequent political history of the Philippine Islands has consisted of a steady increase in local self-government and a progressive withdrawal of United States rule. The culmination of this development began with the Philippine Independence Act of 1934 (48 Stat. 456) which, in addition to Sections 8 and 14 here involved, provided for the drafting of a constitution for the Philippine Islands (Section 1–4), a partial subjection of the products of the Philippine Islands to American tariffs (Section 6), and other steps toward complete independence—which was to take effect in ten years. Because of the intervention of World War II, however, the Philippine Islands did not become fully independent until 1946. Presidential Proclamation No. 2696, July 4, 1946, 11 F. R. 7517.

The constitutional status of the Philippine Islands and its inhabitants. The upshot of a series of decisions by this Court as to the relationship

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itants shall be incorporated into the Union of the United States and admitted as soon as possible * * * to the enjoyment of all the rights"; in the case of Mexico, that they should "be incorporated into the Union, and be admitted at the proper time, (to be judged of by the Congress of the United States,) to the enjoyment of all the rights of citizens of the United States"; in the case of Alaska, that the inhabitants who remained three years, "with the exception of uncivilized native tribes, shall be admitted to the enjoyment of all the rights," etc.;

of the Philippine Islands to the United States was summarized in *Hooven & Allison Co.* v. *Evatt,* 324 U. S. 652, 673, 674–675, as follows:

> That our dependencies, acquired by cession as the result of our war with Spain, are territories belonging to, but not a part of, the Union of states under the Constitution, was long since established by a series of decisions in this Court beginning with *The Insular Tax Cases* in 1901; *De Lima* v. *Bidwell, supra; Dooley* v. *United States, supra,* 182 U. S. 222; *Downes* v. *Bidwell,* 182 U. S. 244; *Dooley* v. *United States,* 183 U. S. 151; and see also *Public Utility Commissioners* v. *Ynchausti & Co.,* 251 U. S. 401, 406–407; *Balzac* v. *Porto Rico,* [258 U. S. 298] * * *
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> * * * * *
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> The status of the Philippines as territory belonging to the United States, but not constitutionally united with it, has been maintained consistently in all the governmental relations between the Philippines and the United States. * * *

Since the Philippine Islands were at no time incorporated into the United States, persons born in the Philippine Islands have not acquired United States citizenship by birth pursuant to the Fourteenth Amendment. Cf. *Elk* v. *Wilkins,* 112 U. S. 94; Burdick, *Law of the American Constitution* (1922) pp. 327–328.

As noted above, Congress in 1902 and again in 1916 declared the inhabitants of the Philippine

Islands and their children subsequently born "to be citizens of the Philippine Islands and as such entitled to the protection of the United States." *Gonzalez* v. *Williams,* 192 U. S. 1, 12–13, held that the native inhabitants of Puerto Rico, prior to the grant of United States citizenship to them in 1917, could not be excluded from this country under a general statute relating to the exclusion of "aliens." Emphasizing that it was not passing upon the power of Congress to provide for the exclusion of such persons, this Court concluded that the statute before it "relates to foreigners as respects this country, to persons owing allegiance to a foreign government, and citizens or subjects thereof," rather than to "citizens of Porto Rico, whose permanent allegiance is due to the United States. * * *" Similarly, in *Toyota* v. *United States,* 268 U. S. 402, 411, it was said that "The citizens of the Philippine Islands are not aliens." However, the *Toyota* decision recognizes not only that citizens of the Philippine Islands are not citizens of the United States, but also that except for a limited class they were racially ineligible for citizenship. This ineligibility for naturalization continued until 1946 (60 Stat. 416; 8 U. S. C. 703).

The chief characteristic of the status of a non-citizen national of the United States is that regardless of his rights and privileges in relation to the United States, his position in the eyes of other nations is substantially that of a citizen of

the United States. He travels on an American passport and he receives American diplomatic protection while he is abroad. Conversely, his status under international law in no way governs his position within the territory of the United States.[3]

[3] While citizens of the various dominions in the British Commonwealth share a common British nationality, that nationality is relevant only in relations with countries outside of the Commonwealth. Within the Commonwealth, such persons are not regarded as primarily British, but as citizens of their respective dominions, and when in other dominions they may be subject to deportation as aliens. See, e. g. *Ex parte Banta Singh* (1938) 1 D. L. R. 789. The insignificance of the concept of "British nationality" within the British Commonwealth has been described as follows:

> * * * Within the Commonwealth a British subject is no more at liberty to roam from Dominion to Dominion than is an alien, in the strict sense of the word, at liberty to enter any part of the Commonwealth. *Nowhere indeed does the term "British subject" mean so little as it does within the British Commonwealth itself.* [Emphasis supplied.]

Fraser, *Control of Aliens in the British Commonwealth of Nations* (London, 1940) 28.

While Fraser notes that Great Britain, herself, has accorded equality of treatment to British subjects from all parts of the Empire, he adds that, "Her very remoteness from India freed the United Kingdom from the unpleasant necessity of herself enacting legislation aimed at Indians," (p. 31). This unmistakably implies that only considerations of legislative policy have prevented Great Britain from treating its noncitizen nationals as aliens. Thus, prior to enactment of new legislation on the subject in 1914, it was held, without dissent, that a naturalized citizen of Australia, who had taken an oath of allegiance to the king and was entitled to British protection in foreign countries, was nonetheless an alien in

Thus, the inhabitants of the Philippine Islands, while admittedly not citizens of the United States, were entitled to the "protection of the United States" and owed "permanent allegiance" to the United States. This status has become known as that of a "national", as distinguished from a "citizen", or a "non-citizen national." Thus, the Harvard Law School, Research in International Law, draft convention on Nationality, contains the following comment (23 Am. J. Int. L. sp. supp., p. 23):

> The term "nationality" has reference to the position of a natural person from the standpoint of international law. Every person permanently attached to a state has its nationality, whatever may be his particular rights and duties with regard to the state. These are dependent upon the constitution and laws of the state. Nationality does not necessarily involve the right or privilege of exercising civil or political functions. *Minor* v. *Happersett* (1874), 21 Wallace 162. Thus nationality has a broader meaning than "citizenship," for which it is frequently used as a synonym. * * *
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> * * * Its use has become common in the United States since the acquisition of the Philippine Islands and other insular pos-

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Great Britain. *Ex parte Markwald*, [1918] 1 K. B. 617; *Markwald* v. *Attorney General*, [1920] 1 Ch. 348; see Wilson, *The Imperial Conference of 1937*, 32 Am. J. Int. Law 335, 337.

> sessions having inhabitants who, though they have American nationality and are entitled to full protection abroad by the Government of the United States, have not the status of "citizens of the United States," within the meaning of Article 14 of the Amendments to the Constitution.

This distinction between "national" and "citizen" was written into Section 101 of the Nationality Act of 1940 (54 Stat. 1137, 8 U. S. C. 501) as follows:

> (a) The term "national" means a person owing permanent allegiance to a state.
>
> (b) The term "national of the United States" means (1) a citizen of the United States or (2) a person who, though not a citizen of the United States, owes permanent allegiance to the United States. It does not include an alien.

Congress was specifically aware that this distinction reflected the position of "the inhabitants of the various outlying possessions who owe permanent allegiance to the United States but have not the status of citizens of the United States." Hearings before the House Committee on Immigration and Naturalization on *Bills To Revise and Codify the Nationality Laws of the United States into a Comprehensive Nationality Code* (1940), p. 412. The distinction was carried forward in Section 101 (a) (21) and (22) of the Immigration and Nationality Act of 1952 in relation to inhabitants

of American Samoa and Swain's Island (66 Stat. 163, 169).

There is no basis for the respondent's suggestion (Resp. br. pp. 22–27) that the Constitution equates the incidents and permanence of non-citizen nationality to those of citizenship. It cannot be contended that a non-citizen national lacks only the political rights of a citizen, such as the right to vote, since such political rights do not necessarily attach to citizenship. *Minor* v. *Happersett,* 21 Wall. 162. What is involved here is whether a non-citizen national has a constitutionally protected right to enter and remain in the United States. That a citizen of the United States has such a right to enter and reside in the United States is beyond dispute. *Colgate* v. *Harvey,* 296 U. S. 404, 429; *Paul* v. *Virginia,* 8 Wall. 168, 180; *Crandall* v. *Nevada,* 6 Wall. 35, 44. But it has never been seriously suggested that a non-citizen national enjoys such rights. Magoon denied it in 1900 following the Treaty of Paris, saying that, "The inhabitants of the islands acquired by the United States during the late war with Spain, not being citizens of the United States, do not possess the right of free entry into the United States. That right is appurtenant to citizenship. The rights of immigration into the United States by the inhabitants of said islands are no more than those of aliens of the same race coming from foreign lands." *Magoon's Reports* (1902) p. 120. The implication that Congress is

free under the Constitution to define the status of the inhabitants of territory acquired by the United States was confirmed by this Court in *Downes* v. *Bidwell,* 182 U. S. 244, 279–280, in the opinion of Mr. Justice Brown:

> We are also of opinion that the power to acquire territory by treaty implies not only the power to govern such territory, but to prescribe upon what terms the United States will receive its inhabitants, and what their *status* shall be in what Chief Justice Marshall termed the "American Empire." There seems to be no middle ground between this position and the doctrine that if their inhabitants do not become, immediately upon annexation, citizens of the United States, their children thereafter born, whether savages or civilized, are such, and entitled to all the rights, privileges and immunities of citizens. If such be their *status,* the consequences will be extremely serious. Indeed, it is doubtful if Congress would ever assent to the annexation of territory upon the condition that its inhabitants, however foreign they may be to our habits, traditions and modes of life, shall become at once citizens of the United States.[4]

No principle of international law is inconsistent with this conclusion. 2 Hyde, *International Law* (rev. ed., 1945), at 1092.

[4] On the proposition that it was not necessary to confer citizenship on the inhabitants of newly acquired territory

As noted above, there is nothing to the contrary in the holding in *Gonzales* v. *Williams, supra.* Moreover, in *Balzac* v. *Porto Rico,* 258 U. S. 298, 308, in discussing the effect of the grant of United States citizenship to Puerto Ricans in 1917, this Court stated:

> * * * What additional rights did it give them? It enabled them to move into the continental United States and becoming residents of any State there to enjoy every right of any other citizen of the United States, civil, social and political. A citizen of the Philippines must be naturalized before he can settle and vote in this country. Act of June 29, 1906, c. 3592, § 30, 34 Stat. 606. Not so the Porto Rican under the Organic Act of 1917.

The clear implication of the quoted language is that non-citizen nationals have no constitutionally protected rights to enter or reside in the United States. Thus, even if respondent were correct in his contention that his status as a non-citizen national cannot be terminated except by his consent or voluntary act, it would not follow that he must be permitted to remain in the United States.

Moreover, it is clear that his entire status as a non-citizen national was subject to modification

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there was agreement among the several justices writing opinions. See opinion of Mr. Justice White, joined in by Justices Shiras and McKenna (182 U. S. at 306), and opinion of Mr. Chief Justice Fuller, joined in by Justices Harlan, Brewer, and Peckham (182 U. S. at 369).

or termination by Congress. By analogy to the position of the natural-born citizen, respondent asserts that since he acquired his status as a non-citizen national by birth in the Philippine Islands, he cannot be deprived of that status except by a voluntary act of renunciation or expatriation, although he has since become a citizen of the Republic of the Philippines, an independent foreign state. A major purpose of our nationality laws is to eliminate just such problems of dual nationality as would flow from the respondent's argument. See, e. g., *Kawakita* v. *United States*, 343 U. S. 717. It was to avoid such consequences that this Court, in *Downes* v. *Bidwell, supra,* recognized a plenary power in Congress to prescribe the status of the inhabitants of territory not incorporated into the United States.

Respondent's argument that his allegiance to the United States precluded the termination of his status as a non-citizen national of the United States, is equally without substance. In the Nationality Act of 1940 and in Section 101 (a) (22) of the succeeding Immigration and Nationality Act of 1952, Congress defined "national of the United States" as including "a person who, though not a citizen of the United States, owes permanent allegiance to the United States." "Permanent allegiance", as thus used to describe a non-citizen national, does not mean an unbreakable bond, but merely distinguishes the unqualified

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allegiance owed by a national from the temporary, limited allegiance owed to the United States by an alien who is only temporarily in the United States and who owes his "permanent" allegiance to the country of which he is a national. *United States* v. *Wong Kim Ark,* 169 U. S. 649, 657; *Carlisle* v. *United States,* 16 Wall. 147, 154.

There is no doubt that Congress so used the phrase "permanent allegiance" in Section 101 (b) (8 U. S. C. 501 (b)) of the Nationality Act; for that provision originated in the nationality code proposed by the State, Labor and Justice Departments and was characterized as follows in the explanatory report submitted to the Congress (Hearings, *ibid.,* p. 412):

> The nationals of a state owe permanent allegiance to the state or the personal sovereign thereof, as distinguished from the obligation of aliens temporarily residing or sojourning in the territory of the state, sometimes called "temporary allegiance," to obey the laws (*Carlisle* v. *United States,* 16 Wall. 147). The word "permanent" in this connection means continuous, or of a lasting nature, as distinguished from "temporary," but it does not connote an indissoluble relationship. *Thus, the "permanent allegiance" owed to the United States by Philippine citizens may continue until terminated at the end of the 10-year period prescribed in the act of Congress of March 24, 1934.* It was permanent allegiance which was referred

to by Justice Iredell, in *Talbot* v. *Jansen*, 1795, 3 Dall. 133, 164, when he said:

> "By allegiance I mean the tie by which a citizen of the United States is bound as a member of the society."[5] [Emphasis supplied.]

Again, while persons in respondent's position were liable for American military service during World War II, the same result would have followed if the Philippine Islands were then independent, for such persons would then have been allied aliens. With the independence of the Philippine Islands, respondent, as a citizen of the Philippines, owes "permanent" allegiance to the Republic of the Philippines, rather than to the United States; he must look to the Republic of the Philippines, rather than to the United States, for passports and diplomatic protection abroad (*Cabebe* v. *Acheson*, 183 F. 2d 795 (C. A. 9)); and his liability for military service in this country is no different from that of other aliens. 50 U. S. C. App. (Supp. V) 454 (a).

II

IN ANY EVENT, CONGRESS COULD MODIFY THE STATUS OF CITIZENS OF THE PHILIPPINE ISLANDS AS NATIONALS OF THE UNITED STATES AS AN INCIDENT TO PROVIDING NATIONAL INDEPENDENCE FOR THE PHILIPPINES

However, it is not necessary to decide here what respondent's rights as a non-citizen national

[5] For use of this report in interpreting the 1940 Act, see *Savorgnan* v. *United States*, 338 U. S. 491, 505.

would be if the Philippine Islands remained under the control of the United States for an indefinite future. It should be decisive in this case that respondent was subjected to deportation and other incidents of the immigration laws by Sections 8 (a) and 14 of the Philippine Independence Act, as part of a major, decisive step toward complete national independence for the Philippine Islands. It will hardly be contended that the United States was without power to provide for Philippine independence. *Hooven & Allison Co.* v. *Evatt, supra.* That case upheld the validity of significant changes in the previously existing trade relationships between the Philippines and this country, changes which were an important part of the transition of the Philippine Islands toward independence.

The precise nature of the transition which began with the 1934 Act was described by this Court in *Hooven & Allison Co.* v. *Evatt, supra,* at 675–678, as follows:

> The Act of 1934 made special provisions for the relations between the two governments pending the final withdrawal of sovereignty of the United States from the Philippines and in particular provided for a limit on the number and amount of articles produced or manufactured in the Philippine Islands that might be "exported" to the United States free of duty. § 6. It provided for the complete withdrawal and surrender of all right of pos-

session, supervision, jurisdiction, control or sovereignty of the United States over the Philippines on the 4th of July following the expiration of ten years from the date of the inauguration of the new government, organized under the Constitution provided for by the Independence Act. § 10 (a). The new Philippine Constitution was adopted on February 8, 1935, and the new government under it was inaugurated on November 14, 1935. * * * *Thus, by the organization of the new Philippine government under the constitution of 1935, the Islands have been given, in many aspects, the status of an independent government, which has been reflected in its relations as such with the outside world.*

* * * * *

The Independence Act, while it did not render the Philippines foreign territory, * * * *treats the Philippines as a foreign country for certain purposes.* * * * [*I*]*t established immigration quotas for Filipinos coming to the United States, as if the Philippines were a separate country, and in that connection extended to Filipinos the immigration laws relating to the exclusion or expulsion of aliens. It also provided* * * * *that citizens of the Philippine Islands who are not citizens of the United States shall be considered as if they were aliens. For purposes of 8 U. S. C. §§ 154 and 156, relating to deportation, the Philippine Islands are declared to be a foreign country.* * * * Foreign service officers of

> the United States may be assigned to the Philippines, and are to be considered as stationed in a foreign country. * * * And the Independence Act, § 6, 48 Stat. 456, 460, provides that "when used in this section in a geographical sense, the term 'United States' includes all Territories and possessions of the United States, except the Philippine Islands, the Virgin Islands, American Samoa, and island of Guam." As we have said, the Philippines have frequently dealt with other countries as a sovereignty distinct from the United States. [Emphasis supplied.]

See also, *Cincinnati Soap Co.* v. *United States,* 301 U. S. 308, 319–320, 322–324.

Incident to that same intricate adjustment, Congress clearly had the power, as this Court recognized in the portion of the *Hooven & Allison* opinion quoted above, to change the status as noncitizen nationals of the United States of citizens of the Philippine Islands residing both there and in this country. This power was as broad as the power of Congress to determine initially, following the Treaty of Paris, the status of the inhabitants of the Philippines. The exercise of that power in Sections 8 (a) and 14 of the 1934 Act reflected both the greater autonomy conferred immediately upon the Philippine Islands and the certainty that within a few years the Philippines would be a completely independent state exacting primary

and "permanent" allegiance from its own citizens. Under these circumstances, Congress clearly had the power to take steps to eliminate the problems of dual nationality which would arise if citizens of the Philippine Island became citizens of their own independent national state while retaining their old status as non-citizen nationals of the United States.

Moreover, these arrangements with respect to a territory and a people preparing for complete independence were not only an exercise of the power of Congress under Article 4, Section 3 of the Constitution to "dispose of * * * territory * * * belonging to the United States," but constituted the basis for our relations with the future Republic of the Philippines. These matters, if not political questions, obviously required that Congress be able to exercise in 1934 the same broad and flexible powers that it admittedly had in initially determining the status of the Philippine Islands and their inhabitants. Indeed, the decisions of this Court which recognized that Congress must be able to utilize a variety of solutions in defining the status of Indians and Indian tribes, *United States* v. *Nice,* 241 U. S. 591, 598, support, *a fortiori,* an equally plenary power in defining the relationship to the United States of persons who are about to become citizens of an independent foreign state. See also *Harisiades* v. *Shaughnessy,* 342 U. S. 580, 588–591.

It should be emphasized that there is here involved no question of the power of Congress to provide for the termination of the non-citizen nationality of persons who thereby will be rendered stateless. Respondent and every other person who became by birth a citizen of the Philippine Islands became citizens of the Republic of the Philippines under Art. IV, Sec. 1, Constitution of the Philippines, 30 Phil. Pub. Laws 373, regardless of whether such persons had remained in the Philippines or came to the United States.

Similarly, there is not involved here any constitutionally protected right of respondent to elect to retain his status as a non-citizen national of the United States. American courts, in situations not controlled by a statute or treaty of the United States, have sometimes recognized and applied an international practice of allowing citizens of ceded or conquered territory, who are residing elsewhere, to elect whether to assume the nationality of the new sovereign of such territory. See, for example, *United States ex rel. Schwarzkopf* v. *Uhl,* 137 F. 2d 898 (C. A. 2). The applicability of any such practice to the peaceful separation of the Philippines from this country is highly doubtful. Respondent clearly could not compel the United States to accept him as a citizen, so that any election would be between Philippine citizenship and a continuation of his nebulous status as a non-citizen national of the United States. When, on July 4, 1946, the Republic of

the Philippines became an independent state, respondent became a citizen of a foreign country to which he owes the permanent allegiance which was previously due to the United States, and to which he must look for diplomatic protection. At this point, without more, his status as a non-citizen national, distinguishing him from aliens generally, terminated. In any event, when Congress by the Act of July 2, 1946 (60 Stat. 416) made "Filipino persons" eligible for naturalization as American citizens, it in effect provided, simultaneously with respondent's loss of his status as a non-citizen national, that persons in respondent's position (who do not by their own acts render themselves ineligible) could elect between remaining citizens of the Republic of the Philippines or becoming citizens of the United States. *Application of Viloria,* 84 F. Supp. 584 (D. Hawaii); and see Note, 50 Col. L. R. 371 (1950).

III

IN SECTIONS 8 (A) AND 14 OF THE PHILIPPINE INDEPENDENCE ACT OF 1934, CONGRESS HAS MADE CITIZENS OF THE PHILIPPINE ISLANDS, REGARDLESS OF WHEN THEY CAME TO THIS COUNTRY, SUBJECT TO DEPORTATION FOR ACTS COMMITTED AFTER MAY 1, 1934

We have shown that by 1934 there was no doubt as to the power of Congress to modify the status of citizens of the Philippine Islands as non-citizen nationals of the United States, particularly

as an incident to the transition of the Philippine Islands to complete national independence. Thus, there is no justification for reading Sections 8 (a) and 14 of the Philippine Independence Act otherwise than according to their plain meaning, or so as to produce absurd results, in order to avoid possible constitutional questions.

Respondent was ordered deported from the United States pursuant to Section 19 (a) of the Immigration Act of 1917 on the ground that he has twice been sentenced to imprisonment for one year or more because of conviction of crimes involving moral turpitude committed after entry. The crimes in question were committed in 1941 and 1950, respectively. Respondent contends (Resp. br. 12), and we concede, that unless his status was that of an alien at the time both offenses were committed, the deportation order cannot stand. We contend that Section 8 (a) of the Philippine Independence Act, which became effective May 1, 1934, made petitioner an alien from that date on for deportation purposes.

Section 8 (a) (1), which with Sections 6, 7 and 9 appears under the heading "Relations With The United States Pending Complete Independence" (48 Stat. 459–463), provides in pertinent part that

> SEC. 8. (a) Effective upon the acceptance of this Act by concurrent resolution of the Philippine Legislature or by a convention called for that purpose, as provided in section 17—

> (1) For the purposes of the Immigration Act of 1917, the Immigration Act of 1924 (except section 13 (c)), this section, and all other laws of the United States relating to the immigration, exclusion, or expulsion of aliens, citizens of the Philippine Islands who are not citizens of the United States shall be considered as if they were aliens. For such purposes the Philippine Islands shall be considered as a separate country and shall have for each fiscal year a quota of fifty. * * *

It is clearly provided that "For the purposes of the Immigration Act of 1917, * * * and all other laws of the United States relating to the * * * expulsion of aliens, citizens of the Philippine Islands who are not citizens of the United States shall be considered as if they were aliens." There is not the slightest suggestion in the quoted language that it is not to apply to such persons who are residing in the United States, and the court below so held, stating (R. 27):

> The Immigration Act of 1917 was one of the statutes specifically envisioned by Congress in providing that for its purposes Filipinos "shall be considered as if they were aliens." Since both convictions occurred after the effective date of the Philippine Independence Act of 1934, Gonzales is properly subject to deportation * * * if he is otherwise subject to its terms.

See also *Mangaoang* v. *Boyd,* 205 F. 2d 553, 556 (C. A. 9), certiorari denied, 346 U. S. 876.

Respondent points out that the second sentence of Section 8 (a) (1) also fixed an annual quota of 50, and then contends, without the slightest support in language, logic or history that the first sentence was intended only to apply the immigration, exclusion and expulsion laws to future immigrants from the Philippines under this quota. As we have pointed out in our main brief (Pet. br. 24), the contemporaneous and repeated administrative construction of Section 8 (a) (1) has applied it to citizens of the Philippines residing in the United States. Moreover, it is inconceivable that Congress would have provided for the deportation of the few criminal or subversive citizens of the Philippines who might enter after May 1, 1934, under such a nominal quota, while remaining indifferent to many more who may have entered freely shortly before that date. That it was clearly understood to apply to citizens of the Philippines residing in the United States is shown by the testimony of Assistant Secretary of State Sayre on the 1939 amendment to Section 8, to the effect that while such persons were to be regarded under the original Section 8 as aliens for immigration purposes, they were not therefore to be treated as aliens for all other purposes (see, *infra,* pp. 25–26).

Again, in seeking to avoid the plain meaning of Section 8 (a) (1), respondent urges that apply-

ing it to Philippine citizens residing in this country would render superfluous Section 14 of the 1934 Act, which, under the heading of "Immigration After Independence" provides that:

> SEC. 14. Upon the final and complete withdrawal of American sovereignty over the Philippine Islands the immigration laws of the United States (including all the provisions thereof relating to persons ineligible to citizenship) shall apply to persons who were born in the Philippine Islands to the same extent as in the case of other foreign countries.[6]

To the contrary, it is clear from the express terms of the Act that Section 8 (a) (1) was to apply only during the interim Commonwealth or transition period leading to complete independence, while Section 14 became effective only upon independence, and is permanent legislation.[7] Applying without qualification to "persons who were born in the Philippine Islands," Section 14 required that respondent continue to be treated as and alien for deportation purposes after the Philippines became independent on July 4, 1946.

Section 2 of the Act of August 7, 1939 (53 Stat. 1226, 1230), adding paragraph (d) to Section 8 of

[6] A cognate statute, the Immigration Act of 1924, as amended, defined "immigration laws" as including "all laws, conventions and treaties of the United States relating to the immigration, exclusion, or expulsion of aliens." 8 U. S. C. 224 (f). An identical definition appears in Section 101 (a) (17) of the Immigration and Nationality Act of 1952.

[7] Section 14 has been recodified as 22 U. S. C. 1281a.

the 1934 Act, to which respondent refers at pp. 18–19 of his brief, far from manifesting an intention by Congress to exclude Filipinos residing within the United States from the express terms of Section 8 (a) (1), was enacted for the very reason that that section did so apply. This is made emphatically clear by the testimony before The Senate Committee on Territories and Insular Affairs of Francis B. Sayre, Assistant Secretary of State and Chairman of the Interdepartmental Committee on Philippine Affairs, which drafted the legislation in question. Referring to Section 2 thereof, Mr. Sayre said (Hearings on S. 1028, 76th Cong., 1st Sess., p. 30):

> As to the first of these, while the rights and privileges of American nationals in the Philippines are adequately provided for in the Tydings-McDuffie Act, there is no corresponding provision for Filipinos in the United States. Moreover, because the Tydings-McDuffie Act specifically provides that Filipinos, in immigration matters, are to be considered as if they were aliens, and because Filipinos are not citizens of the United States although they owe allegiance to the United States, the idea has arisen in some quarters of the United States that Filipinos are aliens in every sense of the word. This, of course, is not true under the existing law. In order to guard against attempts to discriminate against Filipinos as aliens, the bill makes clear that Filipinos in the United States shall

> continue to enjoy until July 4, 1946, the rights and privileges which they enjoyed when the Commonwealth government was inaugurated.

As we have indicated (*supra,* p. 24), the clear implication of this legislation is that Filipinos residing in the United States, as well as those coming from the Philippines, had already been made aliens "in immigration matters" by Section 8 (a) (1) of the 1934 Act. The 1939 amendment sought merely to make certain that pending full independence such resident Filipinos would not suffer discrimination as aliens in other areas notably economic.[8]

Since, as we have shown, respondent became an alien for purposes of deportation when the Philippine Independence Act became effective on May 1, 1934, he obviously did not cease to be such when the Republic of the Philippines became an independent nation on July 14, 1946, when Section 14 of the Philippine Independence Act became effective. Indeed, Section 14 was largely superfluous.[9] For, on that date, respondent ad-

[8] Section 2 was enacted as part of a larger act, the other provisions of which were concerned with tariff and trade matters. The bill was characterized by Mr. Sayre as "confined to economic and commercial arrangements" (Hearings, supra, p. 22).

[9] The express terms of Section 14, particularly its parenthetical application of laws governing ineligibility for citizenship, indicate that it was probably intended to insure the termination of the temporary suspension of the racial bars of Section 13 (c) of the Immigration Act of 1924, which was embodied in Section 8 (a) (1) of the 1934 Act.

mittedly became a citizen of an independent foreign state, to which he owed his primary, permanent allegiance, and to which he must thereafter turn for passports and diplomatic protection. At that point, the entire rationale of *Gonzales* v. *Williams, supra,* disappeared and, without more, respondent ceased to be a national of the United States and became an alien in relation to the United States for all purposes.[10] Respondent's contention that he is not now an alien was summarily rejected by the court below (R. 26), a result reached consistently by other lower federal courts. *Application of Viloria,* 84 F. Supp. 584, 586 (D. Hawaii); *Cabebe* v. *Acheson,* 84 F. Supp. 639, 640 (D. Hawaii), affirmed, 183 F. 2d 795 (C. A. 9); *Mangaoang* v. *Boyd, supra,* at 554. See also *Gancy* v. *United States,* 149 F. 2d 788 (C. A. 8).

IV

RESPONDENT MADE AN "ENTRY" INTO THE UNITED STATES FOR THE PURPOSES OF DEPORTATION PURSUANT TO SECTION 19 (A) OF THE IMMIGRATION ACT OF 1917

In our main brief, we treated respondent's contention (Resp. br. 8–12) that because he was a

[10] That Congress so understood the effect of independence is made clear by the appearance in appropriations acts after 1946 of provisions exempting Filipinos from the stipulation that payment should not be made to employees who did not owe allegiance to the United States. See Appropriations Act of July 30, 1947, 61 Stat. 608; Appropriations Act of April 20, 1948, 62 Stat. 193; Appropriations Act of August 24, 1949, 63 Stat. 661.

non-citizen national of the United States when he came from the Philippine Islands in 1934, he cannot be regarded as having made an "entry" for the purposes of Section 19 (a) of the Immigration Act of 1917.

We now consider his related contention (Resp. br. 6–8) that he did not make an "entry" within the meaning of Section 19 (a) in that when he came to the United States in 1930 he did not come from a foreign port or place, but from a possession of the United States. It is sufficient to say that statutes should be interpreted in a practical sense so as to carry out a clear Congressional purpose. Indeed, this Court has construed the term "entry" in such a way as to effectuate fairly the purposes of the immigration laws. Compare *Volpe* v. *Smith,* 289 U. S. 422, with *Delgadillo* v. *Carmichael,* 332 U. S. 338.

Moreover, there is nothing in the statutory language which requires that in the present context "entry" be read as "entry from a foreign place." As our discussion in our main brief (Pet. br. 11–7) made clear, the concern of Congress in enacting the instant provision was to make aliens who committed crimes of the specified type deportable without limit as to time. The legislative history shows conclusively that Congress sought by this provision to terminate the United States residence of undesirable alien criminals, and in that context, as the court below

said in *United States* v. *Yamamoto,* 240 Fed. 390, 391 (C. A. 9):

> The consideration which induced the amendment was that the objectionable aliens were in the United States, not the manner in which they got here.

In the *Yamamoto* case, as well as in *United States* v. *Sui Joy,* 240 Fed. 392, the aliens involved had entered Hawaii before it came under United States sovereignty, and, thus, clearly never came into the United States from a foreign place. This contention of respondent, like his related argument that he did not make an "entry" because he was not an alien when he came to the United States, would have the effect of practically exempting from our deportation laws thousands of Philippine aliens who came to this country before May 1, 1934, the effective date of the Philippine Independence Act (Pet. br. 22–23). See *Eichenlaub* v. *Shaughnessy,* 338 U. S. 521, 529–532.

Also, in Section 8 (a) (4) of the Philippine Independence Act, Congress provided that "For the purposes of sections 18 and 20 of the Immigration Act of 1917, as amended, the Philippine Islands shall be considered to be a foreign country." Section 20 of the 1917 Act (8 U. S. C. 156) provides that "The deportation of aliens * * * shall * * * be to the country whence they came or to the foreign port at which such aliens embarked for the United States." By analogy, and in view of the clear purposes of Section 8 (a) (1), the

Philippines should be regarded as a foreign country for the purposes of respondent's "entry" into the United States, if coming from a foreign place is a necessary element of an "entry." In *Hooven & Allison* v. *Evatt,* 324 U. S. 652, 669–679, this Court, in holding that articles brought after 1934 from the Philippines to this country were imports, emphasized the necessity for giving a practical effectuation to the purpose of Congress in the Philippine Independence Act to treat the Philippines as a foreign country for certain purposes.

V

THE PRACTICAL CONSIDERATIONS PRESENTED BY THIS CASE

If we are sustained in our contentions, then it will follow that every citizen of the Philippine Islands residing in the United States will be subject to deportation for acts committed after May 1, 1934, the effective date of the Philippine Independence Act. It also will follow that with the establishment of the independent Republic of the Philippines in 1946, citizens of the Philippine Islands who were not citizens of the United States lost their status as non-citizen nationals of the United States, regardless of whether they were residing in the United States. There would thus be avoided a substantial area of dual nationality with its perplexing problems. At the same time, since citizens of the Philippine Islands were made eligible in 1946 for United States naturalization,

the practical effect is to give persons in respondent's position, and who have not disqualified themselves by their own acts, a choice of Philippine or American citizenship. These consequences are so eminently fair and desirable that Section 8 (a) and 14 of the Philippine Independence Act should be given the normal and unstrained interpretation which brings them about.

CONCLUSION

We respectfully submit that the judgment below should be reversed.

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To be argued by Blanch Freedman

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. 431

BRUCE G. BARBER, DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE, SAN FRANCISCO, CALIFORNIA, PETITIONER,

v.

PEDRO GONZALES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT

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BRIEF FOR THE RESPONDENT

Opinions Below

The majority and dissenting opinions below (R. 25-35) are reported at 207 F. 2d 398.

Jurisdiction

Jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1). Judgment of the Court of Appeals herein was entered on September 15, 1953 (R. 36). Petition for a writ of certiorari was granted on December 14, 1953 (R. 38).

Question Presented

Whether respondent, born a national of the United States, in the Philippine Islands, who came to continental United States as such national prior to the enactment of the Philippine Independence Act of 1934, and who was sentenced to imprisonment in 1941 and 1950 for crimes claimed to involve moral turpitude, may now be deported under Section 19(a) of the Immigration Act of 1917.

Statutes Involved

The statutes involved are set forth in the Appendix, infra, pages 29-30.

Statement

The statement of the case as set forth in Petitioner's brief (pp. 3-5) contains all that is material to the consideration of the questions presented to this Court.

ARGUMENT

Introduction

Respondent was ordered to be deported from this country under the authority of Section 19(a) of the 1917 Immigration Law [8 U. S. C. A. 155(a)]. The pertinent provision of that section reads:

> * * * any alien who, after May 1, 1917, is sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States, or who is sentenced more than once to such a term of imprisonment because of conviction in this country of any crime in-

volving moral turpitude, committed at any time after entry; * * * shall * * * be * * * deported * * *. The provision of this section respecting the deportation of aliens convicted of a crime involving moral turpitude shall not apply to one who has been pardoned, nor shall such deportation be made or directed if the court, or judge thereof, sentencing such alien for such crime shall, at the time of imposing judgment or passing sentence or within thirty days thereafter, * * * make a recommendation to the Attorney General that such alien shall not be deported in pursuance of this chapter. * * *

The area of applicability of the foregoing provision is quite explicit. It makes deportable specific persons, to wit:

(1) any alien who is sentenced to imprisonment because of commission of crime involving moral turpitude;

(2) and the conviction took place in this country for an act committed "after the entry of the alien to the United States."

It follows therefore, that no valid order of deportation can be predicated under this provision, without a showing that the subject of deportation

(1) is presently an alien;

(2) that he was an alien when sentenced to imprisonment for crime involving moral turpitude; and

(3) that such crimes were committed after he entered the United States as an alien.

Respondent contends as a matter of law, that all three foregoing preconditions for the issuance of an order of deportation against him, are wanting. The court below agreed that the third condition had not been established,

in that respondent having come to continental United States as a national of this country, had not made the "entry" required by the section (R. 27).

The government in its brief, in effect, argues that the words "after entry" in the statute are meaningless and should be disregarded; or, if they are to be given meaning, the term "entry" should be given a meaning other than what has been heretofore judicially ascribed to it. Neither position has merit.

I

"Entry" into the United States is a precondition to deportability under Section 19(a) of the Immigration Act of 1917. Respondent did not "enter the United States" within the meaning and concept of the term "entry".

A. *"Entry" is a precondition.*

In construing and applying Section 19(a), the courts have repeatedly held the making of an "entry" into the United States to be an essential pre-requisite for "bringing into play' the moral turpitude provisions of that section. *United States ex rel.* v. *DiPasquale* v. *Karnuth,* 158 F. 2d 878; *United States ex rel. Delgadillo* v. *Carmichael,* 332 U. S. 388; *Carmichael* v. *United States ex rel. Delaney,* 170 F. 2d 239; *Del Guercio* v. *United States ex rel. Gabot,* 161 F. 2d 559.

The government suggests that "entry" as a precondition, is essential only in relation to the first part of the moral turpitude provision which refers to conviction of a crime "committed within five years after the entry of the alien," since it there serves to toll the statute, and should be ignored as to the latter part which refers to an alien

sentenced more than once for crimes "committed at any time after entry." That interpretation would ignore and defy the explicit language of the law. The term "after entry" is used twice, once after the 5 year portion and again after the more than one crime portion. It clearly cannot mean one thing in one line and mean something else, or nothing at all, two lines later. If Congress attached no significance to the words "after entry," the sentence could well have ended with the words "committed at any time." Compare Section 157 of 8 U. S. C. A., where deportation is directed for commission of specified offences without reference to "entry."[1] As the court below aptly said:

> The meaning of a term used in a statute cannot mean one thing for one situation and something else for a different situation, else the law would not have that reasonable certainty which the people have a right to expect. (R. 28)

The words "after entry" having been employed in the statute and, clearly, deliberately so employed, they must be given their meaning and applied.

> Where the language of the act is unambiguous and explicit, courts are bound to seek for the intention of the legislature in the words of the Act itself, and they are not at liberty to suppose that the legislature intended anything different from what their language imports. *New Lamp Chimney Co.* v. *Ansonia Brass & Copper Co.*, 91 U. S. 656, 663.

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1 Government's contention would make liable for deportation all native born American citizen women who became aliens by marriage prior to 1922, to an alien, and who had committed while citizens, two specified offences.

B. *Respondent never came from a foreign jurisdiction.*

The term "entry" used in Section 19(a) is neither vague nor ambiguous. Clearly defined by this court and so applied, it is composed of two elements: (1) a coming to the United States from a place of foreign jurisdiction, of (2) a person who is an alien at the time of such coming. In *United States ex rel. Volpe* v. *Smith* (1933), 289 U. S. 422, 425, the Court said:

> We accept the view that the word "entry" in the provision of Sec. 19 * * * includes *any coming of an alien from a foreign country* into the United States * * * (emphasis supplied)[2]

Absent the factor that the coming is from a foreign land, there is no entry under the immigration law. In *United States ex rel. Claussen* v. *Day* (1929), 279 U. S. 398, the Court declared (p. 401):

> The word "entry" by its own force implies a coming from outside. The context shows that in order that there be an entry within the meaning of the Act there must be an arrival from some foreign port or place. There is no such entry where one goes to sea on board an American vessel from a port of the United States and returns to the same or another port of this country without having been in any foreign port or place.[3]

The decision of this Court in *United States ex rel. Delgadillo* v. *Carmichael,* 332 U. S. 388, where the alien was torpedoed into a foreign country while on his way from

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2 This definition and understanding of "entry" has been followed and applied constantly by the courts. See *United States ex rel. Delgadillo* v. *Carmichael* (1947), 332 U. S. 338; *United States ex rel. Di Pasquale* v. *Karnuth* (1947), 158 F. 2d 878; *United States ex rel. Schlimmgen* v. *Jordon* (1948), 164 F. 2d 633; *Del Guercio* v. *United States ex rel. Gabot* (1947), 161 F. 2d 559.

3 Followed in *United States ex rel. Stapf* v. *Corsi* (1932), 287 U. S. 129, 132.

one United States port to another, does not alter or impair this basic concept and meaning of "entry." On the contrary, it strengthens that concept by insisting that a "statutory entry" means there must be an *actual coming from* a foreign place to constitute an entry. This, too, was the rationale of *United States ex rel. DiPasquale* v. *Karnuth*, 158 F. 2d 878, where the alien was whisked through a foreign country while asleep on a train and *Carmichael* v. *United States ex rel. Delaney*, 170 F. 2d 239, where the alien was in foreign territory while serving with the United States armed forces. This concept of "entry" as developed by the courts have now been embodied in the statute law on the subject. Section 101(a)(13) of the Immigration and Nationality Act of 1952 (66 Stat. 167).[4]

It is undisputed that respondent came to the port of San Francisco in 1930, from the Philippine Islands. The Philippine Islands at that time, and since 1899, were a possession of the United States and hence, not foreign territory. *Fourteen Diamond Rings* v. *United States* (1901), 183 U. S. 176, 178, 179. Coming to continental United States from a possession of the United States was not coming from a foreign port or land. 8 U. S. C. A. 173; *United States ex rel. Claussen* v. *Day* (1929), 279 U. S. 398.

When a native of Norway arrived at Boston from Ponce, Puerto Rico, a United States possession in 1903, the solicitor of the Treasury Department had held:

> An alien passenger coming from a port of Porto Rico to a port of the United States proper is not a person coming from a foreign port." In the opinion of the solicitor, the Department concurs. (Treasury Dept. Decisions. Vol. 6. Thurs. April 30, 1903, p. 18.)

No case has ever held otherwise.

4 Section 101(a)(13) [8 U. S. C. A. 1101(a)(13)] provides: "the term 'entry' means any coming of an alien into the United States from a foreign port or place or from an outlying possession, * * *."

Respondent never made an "entry" into the United States since he did not come here from any foreign jurisdiction.

C. *Respondent was not an alien when he came to San Fransisco, California.*

Moreover, respondent could not have made an "entry" into continental United States as he was not an alien at the time he came here. As is manifest from the decisions cited above, an "entry" connotes the arrival of an *alien. United States ex rel. Volpe* v. *Smith, supra.*

This is particularly true as the term is used in the "moral turpitude" provision of Section 19(a). As pointed out above, not only does the section commence with the words "any alien who", but the specific provision embodies the expression, "after the entry of the alien to the United States." So that the only kind of entry contemplated by this law, if the term "entry" has more than one meaning, is entry by an *alien.*

In *Del Guercio* v. *United States ex rel. Gabot,* 161 F. 2d 559, Gabot was a native of the Philippine Islands, who had gone into Mexico from continental United States and then returned. In discussing whether he had entered the United States within the meannig of Section 19(a), the Court said (p. 561):

> * * * Gabot was a national of the United States * * *
>
> In summation we hold, as did the trial judge, that Gabot was not an alien when he crossed the international line in March, 1934, and that legally he could not be considered an alien at that time so as to bring the "turpitude" statute into play.
>
> If the circumstances in this case were such as to justify the consideration of Gabot as an alien, we would hold the crossing from Mexico to the United States as an "entry".

Respondent having been born in the Philippine Islands in 1913, while it was a possession of this country, was a national of the United States like Gabot in the foregoing cited case. *Toyota* v. *United States,* 268 U. S. 402, 411; *Gonzales* v. *Williams,* 192 U. S. 1.

He came to San Francisco, California from the Philippines in 1930 as a United States National (R. 9), and ever since, has lived and resided in continental United States (R. 9), so that he at no time came to the United States or any part of it as an alien. It follows, therefore that respondent never made an "entry" into this country within the contemplation of the law.

Unable to establish an entry by respondent, the government urges that since he is physically present in the country, an "entry" should be presumed. This would do violence to numerous decisions of the courts dealing with expulsion and exclsuion. Indeed, it would destroy the underlying law of exclusion. See *United States ex rel. Kaplan* v. *Todd,* 267 U. S. 228, 231;[5] *Shaugnessy* v. *United States ex rel Mezei,* 345 U. S. 206, 213.

In the instant case, the government looks to the language of the court below, made some 37 years ago in *United States* v. *Kumi Yomamoto,* 240 Fed. 390; *United States* v. *Sui Joy,* 240 Fed. 392; See also *Toma Miyake* v. *United States,* 257

5 In *Kaplan* v. *Tod* (*Supra*) the alien at the age of 13 was excluded in 1914 on entry as being feeble minded. She was nevertheless, permitted to physically enter the United States and physically lived with her mother and father for a period over 10 years. Action by the immigration authorities to deport her 10 years later in 1923, was resisted on the ground that she was no longer an alien, that she had become since her "entry" into the United States, a citizen by the naturalization of her father while she was a minor dwelling and living in this country. The government argued in the *Tod* case—(and successfully) that although physically present in the United States, she could not "* * * be said to have lawfully entered the country so that she may 'dwell' therein, until [she] has been admitted pursuant to * * * immigration laws." [*Kaplan* v. *Tod*, Govt. brief p. 17.] This court concurred with such interpretation of entry and dwelling and held "the appellant never has entered the United States within the meaning of the law" (p. 231).

Fed. 732. The issue in all three cases was whether persons who were aliens in Hawaai before annexation in 1898, and after annexation remained and continued to be alien residents thereof, were subject to deportation for practicing prostitution or receiving the proceeds from such practice at any time "after entry". The Court in the circumstances of that case, construed the word entry in a physical sense of being in the United States. However, the Court was mindful to point out that "the Territory of Hawaai may in a sense be said to have entered the United States by its annexation". Actually, what obtained in that situation was a legal "entry" or incorporation into the United States of an entire land with its inhabitants, some entering in contemplation of law as nationals and others as aliens. Yomamoto had "entered" the United States after the annexation, as an alien. The government does not represent to this Court that these cases are dispositive of the present case. (Govt's brief, p. 21)

In a similar vein of reasoning, the government adverts to the employment of the word entry in Section 326 of the 1952 Immigration Act, 8 U.S.C.A. 1437 and its predecessor 8 U.S.C.A. 721. The significance of these sections is that for the limited and restricted purposes of petitioning for naturalization only, by a Filipino, the word entry is to mean a coming by such Filipino at any time prior to May, 1934 from any place outside of what was on July 4, 1946 (and in 1952) deemed to constitute the United States. On July 4, 1946, the United States meant continental United States "and any water, territory or other place subject to the jurisdiction thereof, * * *" The Philippine Islands, as of that date, were foreign territory. Similarly, the current Immigration and Nationality law, 8 U.S.C.A. 1101(a)(38), defines geographical United States to mean "continental United States, Alaska and Hawaii."

In short, far from establishing a new concept of the term "entry," Congress by this provision, created for naturalization purposes only, a constructive "entry" for Filipinos within the legal concept and intendment of that term and as specifically defined by Congress in 8 U.S.C.A. 1101(a)(13). Compare 8 U.S.C.A. 707(d)(2) and 725 creating constructive United States residence for seamen sailing American ships for 5 years.

D. *Presence here of a large number of Filipinos does not alter meaning of term "entry".*

The government is very agitated that if the section is enforced as it reads, it will be inapplicable to 45,000 persons who as United States nationals came from the Philippine Islands to this country and now reside here. It practically suggests that these 45,000 persons are thus invited to commit crimes with impunity since they will not be subject to expulsion. Such a suggestion conveying a veiled sense of horror and fear that so many criminals are escaping deportation, ill becomes the government representative making it. Far from being horror-stricken, it would appear that the government should welcome the fact that 45,000 persons who have been our nationals and hence our responsibility and concern from 1899 until at least 1946, are protected by existing legislation instead of injured by it. Indeed, as to such persons who are or have been our nationals, it is particularly pertinent to follow the justices of this Court who said:

> * * * I deem it my duty not to squeeze the Act * * * so as to yield every possible hardship of which its words are susceptible * * * (Dissenting opinion, *United States ex rel. Eichenlaub* v. *Shaughnessy*. 338, U. S. 521, 533)

There is nothing novel in the idea that groups of people are excluded from legislative classification. This very act excluded all crimes committed prior to 1917 from consideration and thus exempted all aliens who may have committed them from its sanction. Again, the 1924 Immigration Act was construed to completely bar for illegal entry, the deportation of those who had entered the United States prior to July 1, 1924. *Philippedes* v. *Day,* 283 U. S. 48; *United States ex rel. Stapf* v. *Corsi,* 287 U. S. 129, 131, 132. Many other examples is other laws could be cited.

The substance of the government's position is that regardless of prior definition and understanding of "entry", that word should now be read as it requests because otherwise the 45,000 natives of the Philippine Islands who have been resident here prior to 1934, will not be covered by it. We submit that the meaning of the law is not to be determined by the number of people it does not embrace.

Furthermore, there is nothing in the language of Section 8(a) of the Philippine Independence Act from which can be inferred rationally, any intent of Congress to have the Immigration laws applied to Filipinos differently from their general application.

II

Alienage at time of each sentence to imprisoment for crime involving moral turpitude is essential precondition for deportation under that provision of Section 19(a). Respondent alien was not an alien when he was sentenced.

A. *Alienage at time of sentencing to imprisonment is essential precondition.*

The provision of Section 19(a) under which respondent was ordered to be deported states as clearly as language can, that its sanction was intended to apply to aliens com-

mitting the proscribed acts. The sanction of deportation becomes operative at the moment of sentence. The government seeks to have this provision enforced as if it read "any alien who has been sentenced because of conviction, etc." Its emphasis is on the word alien, and it argues that if the realtor is now an alien who was sentenced, it is immaterial what his status was at that time—he is now deportable. This ignores the plain language as well as the intent of the provision.

The statute in words does not apply to aliens who have been sentenced. It reads very specifically, "any alien *who* * * * *is sentenced*" (emphasis supplied). In effect it is saying that an alien who is sentenced, opens himself up to the penalties of the law at that very moment. It is a warning and hence a deterrent. It serves notice that an alien committing crime becomes subject to deportation. In short, this specific provision commands deportation not for past offenses but for present ones. To be deportable thereunder the sanction must apply when sentence is pronounced.

The choice of language used is not accidental, it is manifestly purposeful. When Congress desired to make past offenses a ground for deportation, in the very same Section 19(a) it used appropriate language. Thus, it provided that "any alien *who was convicted* * * * prior to entry of a felony or other crime * * * shall * * * be * * * deported." (Emphasis supplied.)

The Congressional intent that the "moral turpitude" provision of Section 19(a) be applicable only to aliens committing crime is further evidenced by the qualifying provision with respect thereto in the same section.

> The provision of this section respecting deportation of aliens convicted of a crime involving moral turpitude shall not apply to one who has been pardoned,

> *nor shall* such *deportation be made* or directed *if the court, or judge* thereof, *sentencing such alien* for such crime shall, *at the time of* imposing judgment or passing *sentence* or within thirty days thereafter * * * *make a recommendation* to the Attorney General *that such alien shall not be deported* in pursuance of this chapter. (Emphasis supplied)

Naturally, if a person is not an alien at the time of sentence there would be no occasion for the court to make or the offender to request a recommendation to the Attorney General. The existence of this provision can make sense only if the punitive provision is applied as it reads,—to persons who when sentenced, are aliens.

In *Eichenlaub* v. *Shaughnessy*, 338 U. S. 521, four justices of this Court construed 8 U. S. C. A. 157 (Act of May 10, 1920, 41 Stat. 593) as not requiring a conjunction of alienage and conviction to warrant deportation under that section. However, the statute there read:

> * * * aliens of the following classes * * * shall * * * be deported * * * *aliens who* since August 1, 1914 *have been* or may hereafter be convicted of any violation * * * of* * * [the Espionage Act of 1917]. (Emphasis supplied.)

The language there used was in the past tense, it made past conduct deportable. In that respect, it differs materially from the provision in Section 19(a) involved here, in which the language is entirely in the present tense, making conduct as an alien only deportable.

Nothing contained in the legislative history of Section 19(a) (Govt's brief, pp. 13-16) impels a conclusion as to its meaning, other than as here contended. Conceded, that the general purpose of the section was to rid the United States of undesirable aliens, it does not follow that any

alien the government deems undesirable is deportable. Only those specifically categorized may be thus summarily dealt with. The fact is that Congress itself provided limitations on the applicability of the very provision we are considering. Moral turpitude crimes committed before 1917 were exempted; recommendation of a court against deportation was provided; "entry" was made a precondition.[6]

That alienage at the time of the sentencing was essential to make operative the "moral turpitude" provision of Section 19(a) was the basis of the court's decision in *Del Guercio* v. *United States ex rel. Gabot, supra.* So, too, in this case, the court below did not question that alienage was essential at time of sentence, but it accepted the theory of the government that under Section 8(a)(1) of the Philippine Independence Act of 1934 (48 Stat. 456, 462) the respondent was to be considered as an alien when he was sentenced in 1941 (R. 26-27).

B. *Respondent was not an alien when sentenced for at least one of the crimes, upon which the deportation proceeding is based.*

Respondent was charged in the deportation proceeding with having "been sentenced more than once to imprisonment * * * because * * * of crimes" (R. 25). The sentences in question took place in May or June, 1941 (R. 9) and in 1950 (R. 10). It is respondent's contention, that irrespective of his political status in 1950, at the time of the second offense, he was not an alien in this country in 1941 at the time of his first sentence.

There can be no doubt that having been born in the Philippine Islands about 1913 (R. 9) he was born a national of this country, and having resided only there and then in continental United States (R. 9), he remained such a national until the enactment of the Philippine Independence

6 See for example *Di Pasquale* v. *Karnuth*, 158 F. 2d 878, 879.

Act of 1934 (48 Stat. 464). It has since been held that by the terms of that act, native Filipinos residing here remained nationals of this country until the proclamation of the political independence of the Philippine Islands in 1946 (61 Stat. 1174) and Presidential Proclamation No. 2695 (11 F. R. 7517). *Cabebe* v. *Acheson*, 183 F. 2d 795; *Mangaoang* v. *Boyd*, 205 F. 2d 553, cert. denied 346 U. S. 876. Indeed, in the instant case, the court below held that "Gonzales became an alien on July 4, 1946, upon the proclamation of Philippine Independence" (R. 26).

Respondent was therefore not an alien in 1941 and hence not an alien when he was sentenced in that year for his first offense. Not being an alien at that time, he was not an "alien who is sentenced" and is therefore not subject to the provision of Section 19(a) upon which he was charged for deportation.

The government urges, however, that even though he was not an alien in 1941, he should be treated as one and relies upon the provisions of Section 8(a) of the Philippine Independence Act of 1934 (48 Stat. 462) in support of its contention. That section provided:

> Effective upon the acceptance of this Act by concurrent resolution of the Philippine Legislature or by a contention called for that purpose, as provided in section 17—
>
> (1) For the purposes of the Immigration Act of 1917, the Immigration Act of 1924 (except section 13(c)), this section, and all other laws of the United States relating to the immigration, exclusion, or expulsion of aliens, citizens of the Philippine Islands who are not citizens of the United States shall be considered as if they were aliens. *For such purposes the Philippine Islands shall be considered as a separate country and shall have for each fiscal year a quota of fifty.*" (Emphasis supplied.)

The government says that section was intended to apply to respondent and all other Filipinos living in this country in 1934. We submit this is a distortion and misapplication of this section. The 1934 Act in its entirety made provision for the ultimate independence of the Philippine Islands and provided a *modus vivandi* for the relations between their government and ours during the interval of 10 years between their adoption of the Act and the day of independence. Section 8(a) established the relationship that should exist between the two countries with respect to immigration there from here. It fixed an annual quota that would be admittable and specified that all laws of our country dealing with entry, exclusion and expulsion would apply to them. If the provision as to quota preceded the provision about the applicability of our Immigration Laws to citizens of the Philippine Islands in this Section 8(a), it would be crystal clear that what was provided for here was simply the relationship between the two places on the question of immigration from that time. It had nothing to do with the status of United States nationals of Filipino birth residing here.

If this is not clear from the internal language of Section 8(a) itself, and its context with the rest of the Act, the existence of Section 14 of that Act certainly disposes of the question. That section provided:

> Upon the final and complete withdrawal of American sovereignty over the Philippine Islands the immigration laws of the United States (including all the provisions thereof relating to persons ineligible to citizenship) shall apply to persons who were born in the Philippine Islands to the same extent as in the case of other foreign countries.

If Section 8(a) was intended to effect persons born in the Philippine Islands who were then residing in the United

States, Section 14 was entirely meaningless and superfluous for such persons would have been subject to those laws for at least 10 years prior to final and complete withdrawal of American sovereignty over the Philippine Islands. But Section 14 was neither meaningless nor superfluous. Whatever Congress may have intended to accomplish thereby, it clearly intended that persons born in the Philippine Islands, *who were not living there and who would therefore not be subject to the Immigration Laws made applicable to such residents by Section 8(a), should become subject to those laws when independence was complete.*

The limitation of Section 8(a) to direct relations between the Philippine Islands and the United States only, is further borne out by Section 2 of the amendment to the 1934 Act adopted August 7, 1939 (53 Stat. 1226), which reads:

> Sec. 2. Sec. 8 of the said Act of March 24, 1934, is hereby amended by adding thereto a new subsection as follows:
>
> (d) Pending the final and complete withdrawal of the sovereignty of the United States over the Philippine Islands, except as otherwise provided by this Act, citizens and corporations of the Philippines shall enjoy in the United States all of the rights and privileges which they respectively shall have enjoyed therein under the laws of the United States in force at the time of the inauguration of the Government of the Commonwealth of the Philippine Islands.

It will be noted that Section 8(a) of the 1934 Act refers to "citizens of the Philippine Island who are not citizens of the United States", while the 1939 amendment preserving all rights refers broadly to "citizens and corporations of the Philippines". Since the immigration laws referred to in Section 8(a) do not apply to citizens of the United States that reference to them would have been strange indeed,

except that since the section was applying to people living in the Philippine Islands, it was making clear that United States citizens living there were not becoming subject to our immigration laws, even if they were also citizens of the Philippines. The 1939 amendment apparently was intended to clarify the congressional intent that pending independence, no rights of Filipinos, citizens or corporations, in this country were impaired by the 1934 Act, except as specifically set forth therein. The protection of that amendment was naturally intended to include citizens of the Philippines here in this country or there and those who were citizens of this country or only nationals. The status of respondent as a national of this country was thus further fortified by the 1939 amendment.[7]

It follows, that in no event did relator become subject to the immigration laws, or Section 19(a) thereof, until July 4, 1946, when Philippine independence was proclaimed.

Moreover, the Philippine Independence Act by its own terms expired upon the grant of Philippine independence on July 4, 1946. It was never thereafter extended and it is clear from the statute of independence (60 Stat. 1352) and the proclamation announcing it, that thereafter the immigration and naturalization laws of the United States should apply to alien Filipinos as it applied to other aliens. The 1934 statute having expended itself in 1946, its provisions cannot be resorted to in 1951 when this deportation proceeding was commenced, to find a hook upon which to hang this respondent. For concededly, if Section 8(a) could not be applied to relator, his 1941 sentence occurred while he was a national and not an alien, and there would be no statutory basis whatever for the present deportation proceeding.

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7 During World War II, Filipinos in the United States were nationals, subject to the draft laws, and therefore could not claim immunity from service in the United States armed forces by asserting alienage. (Selective Service Rules & Regulations, Local Board Memo #112.)

III

Present alienage is a precondition to deportability under Section 19(a) of the Immigration Act of 1917. Respondent is not an alien.

A.

The all-embracing issue before this Court is whether the respondent is now an alien. Obviously, if he is not an alien, the deportation proceeding against him must fall. Concededly, he was not an alien at any time in his life prior to July 4, 1946. He was born a national of the United States alone. He at no time had dual nationality. American nationality was his birthright. *Toyota* v. *United States*, 268 U. S. 402; *Gonzales* v. *Williams*, 192 U. S. 1. To this effect, the court below also found (R. 26).

The contention is, however, that by virtue of the United States-Phillipine Independence Treaty and the Presidential Proclamation of July 1946 (*supra*), the respondent was divested of his nationality and thereupon cloaked with alienage. Such conclusion has never been reviewed by this Court. It presently rests upon the rationale of the court below in the case of *Cabebe* v. *Acheson*, 183 F. 2d 795, wherein it was declared:

> * * * the Phillipine Islands came to the United States by cession. And, by such acquisition many individuals became nationals of the United States. Later, the United States relinquished sovereignty over them and their country. It follows that Filipino nationals of the United States inhabiting the Island at the date of such relinquishment lost the status of nationality. The narrower question follows: Does such loss also occur as to Filipino-nationals of the United States domiciled in the United States? * * * (p. 880)

> * * * The status of United States nationality for Filipinos was the direct result of the United States' assumpion of sovereignty over the Islands. When the United States relinquished its sovereignty, there remained no basis for such status.
>
> The United States had it desired it, could have provided that Filipinos permanently residing in the United States would not lose their United States nationality upon the recognition of Philippine independence * * *.
>
> The question is not directly answered (but, as we think, it was inferentially answered) * * * there is no special reference of inclusion or exclusion in any of these acts to Filipinos who were no longer residing in the islands on the date of their independence, * * *. (p. 801)
>
> * * * It is our conclusion that the United States government intended the status of Filipinos, regardless of domicile or place of residence at tse date of Philippine independence, to be entirely separate from any phase of adherence to the United States. (p. 802)

The power of the United States as a sovereign nation to cede, dispose of or otherwise relinquish its sovereignty, *nolens volens,* over parts of its territory, *together with the inhabitants residing therein subject to American sovereignty,* is not here challenged. Presuming this to be an incident of sovereignty, *Jones* v. *United States,* 137 U. S. 702; *De-Lima* v. *Bidwell,* 182 U. S. 1, it becomes an entirely different proposition to assert as an incident of soverignty the right to expatriate or divest of nationality, *nolens volens* (and expel from this country)[8] nationals of the United States residing outside the ceded territory and within the jurisdiction of the United States at the time of cession, because of birth within said territory.

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8 Stripped of nationality, Congress may order the expulsion of Filipinos for any or no reason. *United States ex rel. Harisiades* v. *Shaughnessy,* 342 U. S. 580, 567, 598.

It is respondent's contention that the rights of nationals so situated are no different than would be those of United States citizens.

B.

United States citizens cannot be divested of their nationality except through expatriations. The fundamental basis for expatriation is that there must be a voluntary act on the part of the individual to shed his nationality. In *Perkins* v. *Elg*, 307 U. S. 325, 334, the Court said:

Expatriation is the voluntary renunciation or abandonment of nationality and allegiance. To the same effect, see *Savorgnan* v. *United States*, 338 U. S. 491, 497, 498; *MacKenzie* v. *Hare*, 239 U. S. 299.

That Congress cannot by fiat declare a loss of nationality has been held by this Court on many occasions. In discussing that proposition the Court said in *United States* v. *Wong Kim Ark*, 169 U. S. 649, 703.

> The power of naturalization, vested in congress by the constitution, is a power to confer citizenship, not a power to take it away. 'A naturalized citizen', said Chief Justice Marshall, 'becomes a member of the society possessing all the rights of a native citizen and standing, in the view of the constitution, on the footing of a native. The constitution does not authorize congress to enlarge or abridge those rights. The simple power of the national legislature is to prescribe a uniform rule of naturalization, and the exercise of this power exhausts it, so far as respects the individual. The constitution then takes him up, * * *. Congress having no power to abridge the rights conferred by the constitution upon those who have become naturalized citizens by virtue of acts of congress, a fortiori no act or omission of congress, * * * can affect citizenship acquired as a birthright, by virtue of the constitution

itself, without any aid of legislation. The fourteenth amendment, while it leaves the power, where it was before, in congress, to regulate naturalization, has conferred no authority upon congress to restrict the effect of birth, declared by the constitution to constitute a sufficient and complete right to citizenship.

C

It is undisputed that respondent never voluntarily renounced or abandoned his United States nationality or committed any act inconsistent with the rights or obligations of such nationality. It is urged by the government, however, that respondent and all other persons of Filipino birth residing in this country prior to 1934, automatically lost their nationality by the treaty establishing the independence of the Philippine Islands.

If nationality is analogous to, and cloaked with the same protection that is accorded citizenship, then clearly respondent could not be divested of his nationality by that treaty, *residing as he did in this country*, than if he were a citizen. For the Philippine Independence Act of 1934 and the Treaty constituted no voluntary act of renunciation or self-expatriation on the part of respondent. He did not vote on the ratification of the Independence Act of 1934; nor could he have voted thereon so long as he elected to remain within this country.

Is nationality, then, analogous to and protected like citizenship? Either it is, or else it must be analogous to alienage, for the constitution with respect to nationality recognizes only the two categories.

The Constitution speaks of "citizens" and "natural born citizens" of the United States in Article I and Article II, and of "citizens or subjects" of foreign states in Article III. Before the passage of the Fourteenth Amendment it

contained no definition of citizen. The Fourteenth Amendment says in its opening sentence, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." The term "national" does not appear anywhere in the Constitution of the United States.

Because of this particularity in the language of the Constitution, any status recognized by the law, other than that of citizenship or alienage, must be assimilated to citizenship or alienage if it is to comport with the Constitution. Distinctions may be made among citizens, and also among aliens, but any classes or sub-classes into which citizens or aliens may be divided may not combine the two major and mutually exclusive classes recognized by the Constitution. Unless this is so, the words of the Constitution are meaningless. An alien has been defined by this court in *Low Wah Suey* v. *Backus,* 225 U. S. 460, 473, as:

> One born out of the jurisdiction of the United States, and who has not been naturalized under their Constitution and laws.

The essence of this definition is birth outside of the jurisdiction of the United States. This is the characteristic which distinguishes the alien and sets him apart in a class different from the citizen and national. Respondent having been born under the jurisdiction of the United States, lacked this essential characteristic of alienage. On the other hand, he was endowed with the positive essential characteristic of citizenship, to wit: *birth within the jurisdiction of the United States.*

Next to birth, the all-important requirement and characteristic of citizenship is allegiance and fealty to the government. And this, too, is a concomitant of nationality. Speaking of persons born in the Philippine Islands, this court said in *Toyota* v. *United States* (*supra,* 410)

> The citizens of the Philippines are not aliens. See *Gonzales* v. *Williams*, 192 U. S. 1, 13. They owe no allegiance to any foreign government.

In the earlier case of *Fourteen Diamond Rings* v. *United States*, 183 U. S. 176, this court in referring to the Philippine Islands, said "Their allegiance became due to the United States and they became entitled to its protection" (p. 179).

In the Nationality Act of 1940, 54 Stat. 1137, 8 U. S. C. 501 (b), adopted after the Philippine Independence Act, congress equated nationals with citizens:

> The term "national of the United States" means (1) a citizen of the United States, or (2) a person who, though not a citizen of the United States, owes permanent allegiance to the United States. *It does not include an alien.* (Emphasis supplied.)

This concept, expressed in the 1940 Act was carried forward in the present 1952 law. Section 101(a)(3) of the Act. 8 U. S. C. A. 1101(a)(3), defines an alien to be

> Any person not a citizen or national of the United States.

and it defines a national of the United States (Section 101(a)(22) 8 U. S. C. A. 1101(a)(22)) as:

> (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

As part of his allegiance, a national is subject to the duty of bearing arms and giving his life, if need be, in defense of this country. This respondent and all native born Filipinos in this country have been subject to that duty and obligation *equally with all citizens.*

Thus, by the similarity of birth under United States jurisdiction; by the similarity of like allegiance to this country; by the similarity of like obligation to serve, defend and safeguard this country; by the similarity of the like protection due to them from this country, nationals have been equated with citizens. On the other hand, in no significant characteristic can they be equated with aliens. In fact, in every decision of this Court, where the character of nationality had been discussed, the Court was sharp to point out that nationality cannot be equated with alienage. *Gonzales* v. *Williams, supra; Toyota* v. *United States, supra.*

It must therefore follow, that nationality, like citizenship, may not be lost, divested, forfeited or impaired without a voluntary act of renunciation or abandonment. Respondent, therefore, is still a national.

Assuming, however, that power to expatriate nationals resides in Congress, it is not seriously contended that Congress has so acted with reference to Filipinos residing in this country prior to the adoption of the Independence Act of 1934. This was admitted by the court below in the *Cabebe* case (*supra*) when it held a loss of nationality had taken place. The Court said:

> The question is not directly answered but, as we think, it was inferentially answered) * * * *there is no special reference of inclusion or exclusion in any of these acts to Filipinos who were no longer residing in the Islands on the date of their independence.* (p. 801)

The Court there relied upon various acts of Congress from which it drew an inference that Congress must have intended to denationalize Filipinos residing in the United States.

Respondent's nationality, with which he was born, and which he has at all times maintained by unequivocal acts,

may not be taken away by inference. See, *Mandoli* v. *Acheson,* 344 U. S. 133. In upholding United States nationality in *Perkins* v. *Elg,* 307 U. S. 325, 337, this Court said:

> If the abrogation of that right [to elect nationality] had been in contemplation, it would naturally have been the subject of a provision suitably explicit. Rights of citizenship are not to be destroyed by an ambiguity.

The Court has never been unmindful that the law abhors forfeitures and will favor that construction of a statute which avoids such result. *Washingtonian Pub. Co.* v. *Pearson,* 306 U. S. 30, 41; *United States* v. *One Ford Coach,* 307 U. S. 219, 226; *Knickerbocker Life* v. *Norton,* 96 U. S. 234, 242. Expatriation of respondent is a forfeiture of the nationality he obtained by birth,—a forfeiture which deprives him of "all that makes life worth living". In a case involving the construction of a deportation statute, this Court said:

> We resolve the doubts in favor of that construction [avoiding deportation] because deportation is a drastic measure and at times the equivalent of banishment or exile, * * * It is the forfeiture * * * of a residence in this country. Such a forfeiture is a penalty * * * since the stakes are considerable for the individual, we will not assume that Congress meant to trench on his freedom beyond that which is required by the narrowest of several possible meanings of the words used. Fong Haw Tan v. Phelan, 333 U. S. 6, 10.

If resulting deportation evoked such concern from the Court because it is a forfeiture of residence in the United States, how much more should the Court be concerned where an implied construction is being used to deprive respondent, not only of his reseidence, but of his birthright his United States nationality. See also *Bennett* v. *Hunter,* 76 U. S. 326, 336.

CONCLUSION

On the basis of the foregoing, it is respectfully submitted that the order of the court below should be affirmed.

Respectfully submitted,

Dated: March, 1954.

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APPENDIX

The applicable portions of the statutes involved in this case are as follows:

1.

39 Stats. 889, the Act of February 5, 1917, C. 29, Sec. 19(a), 8 USCA §155(a).

Sec. 155—Deportation of Undesirable Aliens Generally:

> * * * any alien who, after May 1, 1917, is sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within 5 years after the entry of the alien into the United States, or who was sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving moral turpitude, committed at any time after entry; * * * shall, upon the warrant of the Attorney General, be taken into custody and deported. * * * The provision of this section respecting the deportation of aliens convicted of a crime involving moral turpitude shall not apply to one who has been pardoned, nor shall such deportation be made or directed if the court, or judge thereof, sentencing such alien for such crime shall, at the time of imposing judgment or passing sentence or within 30 days thereafter, due notice having first been given to representatives of the state, make a representation to the Attorney General that such aliens shall not be deported in pursuance of this chapter * * *.

2.

The Philippine Independence Act of March 24, 1934, 48 Stats. 456, 48 U.S.C.A. §1231 et seq.

CHARACTER OF CONSTITUTION—MANDATORY PROVISIONS:

Sec. 2(a). The constitution formulated and drafted shall be Republican in form, shall contain a bill of rights, and shall, either as a part thereof or in an ordinance appended thereto, contain provisions to the effect that, pending the final and complete withdrawal of the sovereignty of the United States over the Philippine Islands—

(1) All citizens of the Philippine Islands shall owe allegiance to the United States.

* * *

RELATIONS WITH THE UNITED STATES PENDING COMPLETE INDEPENDENCE:

Sec. 8(a). Effective upon the acceptance of this Act by concurrent resolution of the Philippine Legislature or by a convention called for that purpose, as provided in Section 17.

(1) For the purposes of the Immigration Act of 1917, the Immigration Act of 1924 (except section 13(c)), this section, and all other laws of the United States relating to the immigration, exclusion, or expulsion of aliens, citizens of the Philippine Islands who are not citizens of the United States shall be considered as if they were aliens. For such purposes the Philippine Islands shall be considered as a separate country and shall have for each fiscal year a quota of fifty * * *.

* * *

Appendix

IMMIGRATION AFTER INDEPENDENCE:

Sec. 14. Upon the final and complete withdrawal of American sovereignty over the Philippine Islands the immigration laws of the United States * * * shall apply to persons who were born in the Philippine Islands to the same extent as in the case of other foreign countries.

3.

Act of August 7, 1939, 53 Stats. 1226, amending the Philippine Independence Act of 1934.

* * * Sec. 2—Sec. 8 of the said Act of March 24, 1934, is hereby amended by adding thereto a new subsection as follows:

(d) Pending the final and complete withdrawal of the sovereignty of the United States over the Philippine Islands, except as otherwise provided by this Act, citizens and corporations of the Philippines shall enjoy in the United States all of the rights and privileges which they respectively shall have enjoyed therein under the laws of the United States in force at the time of the inauguration of the Government of the Commonwealth of the Philippine Islands.

SUPREME COURT OF THE UNITED STATES

No. 431.—October Term, 1953.

Bruce G. Barber, District Director, Immigration and Naturalization Service, San Francisco, California, Petitioner, *v.* Pedro Gonzales.	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[June 7, 1954.]

Mr. Chief Justice Warren delivered the opinion of the Court.

Respondent was born in the Philippine Islands in 1913 and came therefrom to the continental United States in 1930. He has lived here ever since. In 1941, he was convicted in the State of California of assault with a deadly weapon and was sentenced to imprisonment for one year in the Alameda County jail. In 1950, he was convicted in the State of Washington of second degree burglary and was sentenced under the indeterminate sentence law of that state to a minimum term of two years in the state penitentiary. In 1951, after an administrative hearing, he was ordered deported to the Philippine Islands under § 19 (a) of the Immigration Act of 1917 as an alien who "after entry" had been sentenced more than once to imprisonment for terms of one year or more for crimes involving moral turpitude. 39 Stat. 889, as amended, formerly 8 U. S. C. § 155 (a).

After respondent was taken into custody, he filed a petition for a writ of habeas corpus in the United States District Court for the Northern District of California.

The petition attacked the validity of the deportation order on the ground, among others, that he was not subject to deportation under § 19 (a) since he had not made an "entry" within the meaning of that section. The District Court dismissed the petition. On appeal, the Court of Appeals for the Ninth Circuit, with one judge dissenting, reversed the District Court's judgment and remanded the case with directions to order respondent's release from custody. 207 F. 2d 398. We granted certiorari. 346 U. S. 914.

The sole question presented is whether respondent—who was born a national of the United States in the Philippine Islands, who came to the continental United States as a national prior to the Philippine Independence Act of 1934, and who was sentenced to imprisonment in 1941 and 1950 for crimes involving moral turpitude—may now be deported under § 19 (a) of the Immigration Act of 1917.

It is conceded that respondent was born a national of the United States; that as such he owed permanent allegiance to the United States, including the obligation of military service; that he retained this status when he came to the continental United States in 1930 and hence was not then subject to the Immigration Act of 1917 or any other federal statute relating to the exclusion or deportation of aliens.[1] The Government, however, contends that respondent's status as a national was changed

[1] From the Spanish cession in 1898 until final independence in 1946, the Philippine Islands were American territory subject to the jurisdiction of the United States. See *Hooven & Allison Co.* v. *Evatt*, 324 U. S. 652, 674–676. Persons born in the Philippines during this period were American nationals entitled to the protection of the United States and conversely owing permanent allegiance to the United States. They could not be excluded from this country under

by the Philippine Independence Act of 1934, 48 Stat. 456, which provided for the eventual independence of the Philippines, subsequently achieved in 1946, 60 Stat. 1352. Section 8 (a)(1) of the 1934 Act provides:

> "For the purposes of the Immigration Act of 1917, . . . this section, and all other laws of the United States relating to the immigration, exclusion, or expulsion of aliens, citizens of the Philippine Islands who are not citizens of the United States shall be considered as if they were aliens. For such purposes the Philippine Islands shall be considered as a separate country and shall have for each fiscal year a quota of fifty."

The Government urges that the reference in § 8 (a)(1) to "citizens of the Philippine Islands" includes Filipinos then residing in the United States; that by virtue of this provision the respondent was assimilated to the status of an alien for purposes of "immigration, exclusion, or expulsion"; and that, having been twice convicted thereafter of crimes involving moral turpitude, he is deportable under § 19 (a) of the Immigration Act of 1917.

The Government's argument is premised on the assumption that respondent made an "entry" within the meaning of § 19 (a). If he did not make such an "entry," then he is not deportable under that section, even assuming that the Government is correct in its broad construction of the 1934 Philippine Independence Act. Section 19 (a) provides:

> ". . . except as hereinafter provided, any alien who is hereafter sentenced to imprisonment for a term of

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a general statute relating to the exclusion of "aliens." See *Gonzalez* v. *Williams*, 192 U. S. 1, 12–13; *Toyota* v. *United States*, 268 U. S. 402, 411. But, until 1946, neither could they become United States citizens. See *Toyota* v. *United States*, *supra*; 60 Stat. 416.

> one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States, or who is hereafter sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving moral turpitude, *committed at any time after entry* . . . shall, upon the warrant of the Attorney General, be taken into custody and deported. . . ." (Italics added.)

The Court of Appeals sustained respondent's contention that he had never made the requisite "entry." With this conclusion, we agree.

The Government would have us interpret "entry" in § 19 (a) in its "ordinary, everyday sense" of a "coming into the United States." Under this view, respondent's "coming into the United States" from the Philippine Islands in 1930 would satisfy the "entry" requirement. While it is true that statutory language should be interpreted whenever possible according to common usage, some terms acquire a special technical meaning by a process of judicial construction. So it is with the word "entry" in § 19 (a). *E. g., Delgadillo* v. *Carmichael*, 332 U. S. 388; *United States ex rel. Claussen* v. *Day*, 279 U. S. 398; *DisPasquale* v. *Karnuth*, 158 F. 2d 878; *Del Guercio* v. *Gabot*, 161 F. 2d 559. Cf. *United States ex rel. Volpe* v. *Smith*, 289 U. S. 422, 425.[2] In *United States ex rel.*

[2] In the *Volpe* case, the Court stated:

"We accept the view that *the word 'entry'* . . . [in § 19 (a)] . . . *includes any coming of an alien from a foreign country into the United States* whether such coming be the first or any subsequent one. And this requires affirmance of the challenged judgment . . . . That the second *coming of an alien from a foreign country into the United States* is an entry within the usual acceptation of that word is clear enough from *Lewis* v. *Frick*, 233 U. S. 291; *Claussen* v. *Day*, 279 U. S. 398. An examination of the Immigration Act of 1917, we

Claussen v. *Day*, *supra*, at 401, this Court stated the applicable rule:

> "The word 'entry' [in § 19 (a)] by its own force implies a coming from outside. The context shows that in order that there be an entry within the meaning of the Act *there must be an arrival from some foreign port or place*. There is no such entry where one goes to sea on board an American vessel from a port of the United States and returns to the same or another port of this country without having been in any foreign port or place." (Italics added.)

See also *United States ex rel. Stapf* v. *Corsi*, 287 U. S. 129, 132; *Carmichael* v. *Delaney*, 170 F. 2d 239, 242–243. This concept of "entry" was codified by Congress in the Immigration and Nationality Act of 1952.[3]

At the time respondent came to the continental United States, he was not arriving "from some foreign port or

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think, reveals nothing sufficient to indicate that Congress did not intend the word 'entry' in § 19 should have its ordinary meaning." (Italics added.)

The context of the latter sentence makes it clear that the Court regarded the word's "ordinary meaning" as being "any coming of an alien from a foreign country." In the *Delgadillo* case, *supra*, the Court narrowed this definition even further by holding that a resident alien does not make an "entry" from a foreign country if his arrival in the foreign country was unintentional.

[3] Section 101 (a)(13) of the 1952 Act, 66 Stat. 167, 8 U. S. C. § 1101 (a)(13), provides in pertinent part:

"The term 'entry' means any coming of an alien into the United States, from a foreign port or place or from an outlying possession. . . ."

Section 101 (a)(29), 66 Stat. 170, 8 U. S. C. § 1101 (a)(29), defines "outlying possessions" as American Samoa and Swains Island. By a special provision in the 1952 Act, the exclusion process is made applicable to any alien coming to the continental United States from Hawaii, Alaska, Guam, Puerto Rico, or the Virgin Islands. 66 Stat. 188, 8 U. S. C. § 1182 (d)(7).

place." On the contrary, he was a United States national moving from one of our insular possessions to the mainland. It was not until the 1934 Philippine Independence Act that the Philippines could be regarded as "foreign" for immigration purposes. Having made no "entry," respondent is not deportable under § 19 (a) as an alien who "after entry" committed crimes involving moral turpitude. The Government warns that this conclusion is inconsistent with a broad congressional purpose to terminate the United States residence of alien criminals. But we believe a different conclusion would not be permissible in view of the well-settled meaning of "entry" in § 19 (a). Although not penal in character, deportation statutes as a practical matter may inflict "the equivalent of banishment or exile," *Fong Haw Tan* v. *Phelan*, 333 U. S. 6, 10, and should be strictly construed. See *Delgadillo* v. *Carmichael*, 332 U. S. 388, 391. In the absence of explicit language showing a contrary congressional intent, we must give technical words in deportation statutes their usual technical meaning.[4]

The judgment of the Court of Appeals is

Affirmed.

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[4] The respondent also attacks the validity of the deportation order on the grounds: (1) that he made no "entry" because he was not an alien when he came to this country; (2) that § 8 (a) (1) of the 1934 Philippine Independence Act did not apply to Filipinos already residing here and that hence he was not an alien in 1941 when he was sentenced for one of the two crimes involved in this proceeding; (3) that he is not an alien today because Congress lacked the power to deprive him of his status as a national. Our disposition of the case makes it unnecessary to consider these contentions.

SUPREME COURT OF THE UNITED STATES

No. 431.—October Term, 1953.

Bruce G. Barber, District Director, Immigration and Naturalization Service, San Francisco, California, Petitioner, *v.* Pedro Gonzales.	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[June 7, 1954.]

Mr. Justice Minton, with whom Mr. Justice Reed and Mr. Justice Burton join, dissenting.

But for this Court's holding that § 19 (a) of the Immigration Act of 1917 must be construed strictly and the word "entry" given a special meaning, I would be content with the excellent dissent of Judge Bone in the court below. 207 F. 2d 398, 402.

The effect of the Court's opinion is to construe the Act strictly in favor of the convicted criminal sought to be deported for his criminal acts, rather than in favor of the United States in protection of its citizens. I know of no good reason why we should by strained construction of an Act compel the United States to cling onto alien criminals. It is not the public policy of this country to construe its statutes strictly in favor of alien criminals whose convictions have already been established of record. Why should we give a strained construction to the word "entry" in the instant case? The least we should do is to give the word "entry" its ordinary meaning.

In construing this very statute, this Court said in *United States ex rel. Volpe* v. *Smith*, 289 U. S. 422, 425:

> "An examination of the Immigration Act of 1917, we think, reveals nothing sufficient to indicate that

> Congress did not intend the word 'entry' in § 19 should have its ordinary meaning."

Cf. *Eichenlaub* v. *Shaughnessy*, 338 U. S. 521.

The case of *Delgadillo* v. *Carmichael*, 332 U. S. 388, lends no authority to this case. In that case, the alien had never voluntarily left the United States for foreign land. His ship was torpedoed. He was blown into the sea. He was rescued and taken to Cuba, from whence he came back to the United States by way of Miami, Florida. This Court said:

> "In this case petitioner, of course, chose to return to this country, knowing he was in a foreign place. But the exigencies of war, not his voluntary act, put him on foreign soil. It would indeed be harsh to read the statute so as to add the peril of deportation to such perils of the sea. We might as well hold that if he had been kidnaped and taken to Cuba, he made a statutory 'entry' on his voluntary return. Respect for law does not thrive on captious interpretations." P. 391.

There is nothing captious or fortuitous about this petitioner's "entry" into the United States. He came to this country from outside, as all aliens do. No case by this Court supports the special construction given by the Court to the word "entry."

Because of the Court's strict construction of this statute, which has the effect of putting a liberal construction on the statute in favor of the alien criminal, which I believe to be contrary to the public policy of this country, I dissent.